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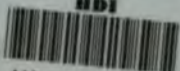
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Aug. 3, 1897.

A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS, 1862-1886,

AND

**PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,
1836-1886,**

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

JOSEPH VERE WOODMAN,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND ADVOCATE OF THE HIGH COURT, CALCUTTA.

IN FIVE VOLUMES.

VOLUME II. E—K.

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CORRIGENDA.

- COL. 1678.—*Line 16 from top, after "FRAUD" insert "PLEADING ONE'S OWN FRAUD".*
- COL. 1717.—*Last line, in reference, before "B. L. R." insert "9".*
- COL. 1765.—*Case 245, in reference, for "4 B. L." read "4 B. L. R."*
- COL. 2131.—*At end of case 109, insert "LAKSHMANAPPA v. RAMAYA . . 12 Bom., 364".*
- COL. 2559.—*Below line 15 from top, after "18 W. R., 359" add "L. R., I. A., Sup. Vol., 47".*
- COL. 2576.—*Case 20, in name of case, for "SHIVDA" read "SHIVDAS".*
- COL. 2577.—*Case 25, in name of case, for "BRASAD" read "PRASAD".*
- COL. 2578.—*Case 28, in reference omit "Rep."*
- COL. 2602.—*Case 5, last line, after "GOCHO" insert "v."*
- COL. 2674.—*Case 3, in name of case, for "GULABRAI" read "GULABHAI".*
- COL. 2741.—*Case 29, in reference, for "4 C. L. R., 453" read "4 C. L. R., 353".*
- COL. 2744.—*Case 42, in name of case, for "DKHINA" read "DUKHINA".*
- COL. 2839.—*Case 13, in reference to second case, for "I. L. R., 84, note" read "I. L. R., 5 Bom., 84, note".*
- COL. 2871.—*Line 21, after "SINGH" insert "v."*

A DIGEST
OF
THE HIGH COURT REPORTS,
1862-1886,
AND OF
THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,
1836-1886.

E

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See CASES UNDER LIMITATION ACT, 1877,
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[I. L. R., 11 Cal., 52
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Right of officiating priest to church property.—*Right of permanent incumbent.*—A person temporarily officiating as priest has no right or title to the property of the church in which he officiates. The permanent incumbent, and that portion of the community which remains attached to his ministrations, might perhaps claim the restoration of a portion of the property shared by trustees. *FERNANDEZ v. FERNANDEZ*

[2 Ind. Jur., O. S., 12]

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[I. L. R., 1 Mad., 25
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[I. L. R., 1 Mad., 40]

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See CASES UNDER LANDLORD AND TENANT—EJECTMENT.

See CASES UNDER ONUS PROBANDI—EJECTMENT.

See ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.
[I. L. R., 6 Bom., 508]

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See PARTIES—PARTIES TO SUITS—CO-SHARERS . . . I. L. R., 4 Calo., 961

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—RECOVERY OF IMMOVABLE PROPERTY.

[I. L. R., 5 Bom., 295
I. L. R., 10 Bom., 30

1. ——— Title, Proof of.—*Necessity for plaintiff to prove superior title.*—In a suit for ejectment the plaintiff must make out a title superior to that of the defendant before he can obtain a decree. **MOHESH CHUNDER LAHOORY v. SUMBHOO CHUNDER ROY CHOWDHRY** . . . 2 Hay, 303

2. ——— *Necessity for plaintiff to prove superior title.*—In a case of ejectment (even though the dispute be merely as to which of the two parties the land belongs) the plaintiff must succeed by the strength of his title only, and not by the weakness of the defence. **SUTTO SURN GHOSAL v. DHONE KRISTNO SINGAR** . . . 1 W. R., 68

CHUNDER MONTE CHOWDHRAIN v. RAJ KISHORE SHAHA . . . 5 W. R., 246

See **BHOOSUN MOHUN MUNDLE v. RASH BEHABEE PAL** . . . 15 W. R., 84

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3. ——— *Necessity for plaintiff to prove superior title.*—It is essential that a claimant, seeking to oust a party in possession of an estate, should establish his own right to the estate, and not rely upon the failure of the title impeached. A decree of the Sudder Court held that, although the title set up by the plaintiff was wholly bad, yet that a party defendant with whom the plaintiff had, by a deed of compromise, agreed to divide the estate, had shown his title, and on that ground decreed possession against the other defendant. Such decree reversed by the Privy Council on appeal, as the effect of the decree would be (1) to defeat the defendant's possessory title without giving him an opportunity of contesting the title of the party by whom he is turned out of possession, and (2) as it was a violation of legal principles which protect possession and of the substantial principles of justice which regulate the joinder of parties and union of titles to sue in one suit. **JOWALA BUKSH v. DHABUM SINGH** . . . 10 Moore's I. A., 511

4. ——— *Proof of title of vendor where plaintiff is a purchaser.*—In a suit for ejectment, strict proof of title must be adduced by a plaintiff. It is not sufficient for him to prove that the deed under which he claims was duly executed; he must be put to proof of the title of his vendor. **KALBE PRESHAD MOITRA v. ITOHA MOYEE** [24 W. R., 337

TINEY v. KRISTO MOHUN BOSE. HORENDEO v. AKBAR ALI . . . I. L. R., 1 I. A., 76

5. ——— *Suit for possession of chur land.*—*Onus probandi.*—Where a party seeks to turn out another in possession of chur land

EJECTMENT, SUIT FOR.—Title, Proof of —continued.

which the plaintiff claims as a part of a mehal purchased by him from Government, the suit is in the nature of an ejectment suit, and the plaintiff must recover upon the strength of his own title, and not on the weakness of that of his adversary. It is immaterial in such a case to consider whether or not the land is the property of the defendant; because unless it is proved to be the property of the plaintiff, the latter is not entitled to turn out the former. **SHORNOMOYEE v. WATSON & Co.**

[20 W. R., P. O., 211
affirming decision of High Court in **WATSON & Co. v. SHORNOMOYEE** . . . 9 W. R., 259

6. ——— Present right to possession. —*Suit by reversioner against widow for possession.*—A plaintiff who has not a present right to possession cannot sue to eject. Where therefore plaintiffs, divided members of the family of defendant's husband, sued the defendant, a widow, for possession of property which she had received from her husband on the ground that she was improperly alienating it, —*Held* that the Court could not grant the relief asked for. **BANGARAIYA v. BALABHADRA RAZU**

[2 Mad., 386

RAMAN ANMAL v. SUBBAN ANNAYI alias SUBRAMAYAN ANNAYI . . . 2 Mad., 369

7. ——— Right to possession.—*Hindu mortgagees.*—*Want of possession.*—*Sufficient possession to maintain suit.*—In order that a Hindu mortgagee may successfully maintain an action of ejectment against third persons wrongfully in possession of the mortgaged property, it is not necessary that such mortgagee should have been put in possession by his mortgagor. He can bring his action based upon the title of his mortgagor, if the mortgagor had a good title to the land, and was in possession of it within twelve years before the suit was brought. **KRISNAJI NARAYAN v. GOBIND BHASKAR** . . . 9 Bom., 276

8. ——— Right to sue to set aside sale in execution of decree.—*Right to sue for ejectment.*—*Title, Sufficiency of.*—In a suit to recover possession of land acquired by plaintiff's vendor by purchase at an auction-sale of the rights and interests of one S., where defendant claimed under a deed of sale from the same S., and the lower Appellate Court found that plaintiff had been in possession, and had been forcibly ejected by the defendant, —*Held* that defendant's only title was the right to sue to set aside the sale in execution under which plaintiff held possession, and that this title did not avail him to eject plaintiff without a decree first obtained. **BUNGSHEE DHUR DOSS v. BHUGWAN DOSS** . . . 24 W. R., 117

9. ——— Failure to prove title.—*Possession by defendants under void decree.*—*V. mortgaged to the plaintiff his house and certain undivided land in which H. and others, Hindu coparceners, had a share. E. bought the interest of H. in the land at a Court sale and let it to H. and V., who, failing to pay rent, were sued by E., who got a decree for possession. This decree was transferred for execution to the Collector, who sold the land and rateably*

EJECTMENT, SUIT FOR.—Failure to prove title—continued.

distributed the proceeds, except to V., who declined to take the amount tendered as his share. In a suit against V. and the purchasers under E.'s decree to recover his mortgage-debt by a sale of the property mortgaged to him, the proceedings of the Collector were held to be without jurisdiction, and the plaintiff was entitled to ignore them, and assert his claim under the mortgage. *Held* that the defendants being in actual possession—albeit through a sale under a void decree—could not be ousted in the present suit, and were entitled to say that the plaintiff had not proved his title to sell the specific lands mortgaged. **NARAYAN NAGARKAR v. VITHU JAKHOTI**

[I. L. R., 8 Bom., 539]

10. — Right to eject mortgagee of ryot with right of occupancy.—The sons of a zemindar, whose zemindari estate is held on mortgage by a third party, are not justified in ousting the mortgagee of a ryot having a right of occupancy. **KHOSHAALE v. BULJEET**

2 Agra, 79

11. — Demand of possession.—*Proceedings under Criminal Procedure Code, s. 530.*—Proceedings in a Criminal Court, under section 530 of the Code of Criminal Procedure, are not a sufficient demand of possession for the purpose of maintaining an ejectment suit. **RAM ROTTON MUNDUL v. NETRO KALLY DASSEE**

[I. L. R., 4 Calc., 339]

12. — Fraudulent transfer of property.—*Defendant not in possession.*—In a suit for possession by parties claiming as mortgagors against two sets of defendants, (1) the representatives of the original mortgagees; and (2) certain persons who were alleged to have effected in collusion with the first defendants a fraudulent transfer of the property from their hands in another name,—*Held*, with reference to the nature of the suit, which was one in the nature of ejectment, and which was found to be barred against the second defendants, that no decree could rightly be given against the first defendants, though they might have been guilty of breach of trust against the plaintiff and be liable in a suit properly framed for the purpose, as they were in no sense in possession. **AMEENA BEGUM v. DOORDANAH KHANUM**

19 W. R., 44

13. — Mortgage.—Redemption, Decree for.—If a suit is brought in ejectment, and the defendant proves that he holds a mortgage, a decree for redemption cannot be made without his consent. **CHANDU v. KOMBI**

I. L. R., 9 Mad., 199

14. — Misstatement of area of land.—*Precise definition by other description.*—In a suit for ejectment a mere misstatement of the area of the land sought to be recovered, ought not to be regarded as anything more than a "false demonstration." If the space is precisely defined by other description, the statement of its measurement in square yards may be treated as surplusage, and of no consequence. **VIJAYANDAS MADHAYDAS v. MAHOMED ALI KHAN**

I. L. R., 5 Bom., 208

EJECTMENT, SUIT FOR—continued.

15. — Obligation of plaintiff to accept compensation.—The Court will not oblige the plaintiff in a suit in the nature of an action of ejectment to accept compensation. **SORABJI NARSARANJI DUNDAS v. JUSTICES OF THE PEACE FOR CITY OF BOMBAY**

12 Bom., 250

16. — Intervenor.—*Issue, Power of Judge to try.*—Where, in a suit brought by a zemindar to eject a ryot, a person intervenes claiming to be a mortgagee of a portion of the ryot's tenure, the Judge is competent to try the mortgagee's right to oppose the ejectment. **GOPAL v. RAM SUROOP LALL**

1 Agra, Rev., 51

17. — Ejectment for non-performance of services.—*Rate of rent where service is commuted.*—Where a plaintiff sues for the ejectment of the defendant on the ground that the latter has failed to render certain stipulated service, and the defence is that the defendant offered a money payment in lieu of service, as he had the option of doing, the Court, in deciding against the plaintiff, is not bound to take evidence as to the rate of rent to which the service ought to be commuted. **BALINDUR NARAIN v. KALLA MESSOO KOOS**

18 W. R., 340

EMBANKMENTS.

1. — Addition to existing embankment.—*Notification, Publication of.*—*Beng. Act II of 1882 (Bengal Embankment Act), ss. 6, 76, cl. (b), and 80.*—The words "shall add to any existing embankment" in clause (b), section 76 of Bengal Act II of 1882, are not intended to mean any repair of an existing embankment, even if the effect of such repair be to make the embankment higher or broader, but only means an extension in the length of an existing embankment. The notification referred to in section 6 of the Act must be published in the manner provided by section 80, and it is not sufficient for such notification merely to be published in the *Calcutta Gazette*. **GOYERDHAN SINHA v. QUEEN-EMPERESS**

I. L. R., 11 Calc., 570

2. — Maintenance of embankment.—*Prescriptive right.*—*Liability for damage done by escape of water.*—Where a defendant shows a prescriptive right to maintain a bund, and uses all reasonable and proper precautions for its safety, he cannot be made liable for damage caused by the escape or overflow of water on to the lands of others and the consequent injury of the crops thereon, if the escape or overflow be caused by the act of God, or *vis major*. **RAM LALL SINGH v. LILL DHARY MURTON**

I. L. R., 3 Calc., 776

See MADRAS RAILWAY COMPANY v. ZEMINDAR OF CARVETINAGARAM

[14 B. L. R., 209; I. R., 1 I. A., 364]

3. — Inundation.—*Embankments.*—*Liability to repair.*—*Beng. Act VI of 1878.—Regs. II, VIII, and XXXIII of 1793.—Reg. VI of 1806.—Reg. XI of 1829.—Act XXXII of 1865.*—In a suit for damages caused by the overflow of a river through an embankment on the defendant's land, it appeared that the defendants held

EMBANKMENTS.—Maintenance of embankment—*continued*.

under a kabuliat from Government, which provided that the zemindar should not object to pay rent on the score of drought or inundation; that he should bear all losses incurred on that account; and also that he should do embankment work at the proper time, and should be liable for loss from negligence. It did not appear whether the embankment was in existence when the kabuliat was granted. It was proved that the defendants received an annual sum from Government as a contribution to the repairs of embankments, but such payment was not provided for in the kabuliat, and no evidence was given as to the terms of the agreement under which it was paid. *Held* that there was no common law liability to repair imposed on the defendants; that it not having been proved that the embankment in question was in existence at the date of the kabuliat, the defendants were not liable *ratione tenura*, and that if the sum paid by Government was in consideration of the defendants' maintaining the embankment in question, and if the terms of the agreement under which it was paid showed that it was intended to impose the obligation to repair for the public benefit, the defendants would be liable. Regulations and Acts relating to embankments in Bengal considered. *NUFFER CHUNDER BRUTTO v. JOTENDRO MOHUN TAGORE*

[I. L. R., 7 Calc., 505; 8 C. L. R., 553]

EMBLEMENTS, RIGHT TO—

See SALE IN EXERCUTION OF DECREE—PURCHASERS, RIGHT OF—EMBLEMENTS.

[I. L. R., 2 Bom., 670]

EMIGRATION OF NATIVE LABOURERS.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—EMIGRANTS, &c.

[4 Mad., Ap., 4]

ENCROACHMENT.

See LANDLORD AND TENANT—ACCRETION TO TENURE . . . 1 B. L. R., A. C., 21

[22 W. R., 246]

I. L. R., 10 Calc., 820

See LANDLORD AND TENANT—OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT.

[9 C. L. R., 347]

See RIGHT OF SUIT—BUILDING, SUIT TO RESTRAIN . . . 22 W. R., 73

ENDORSEMENT.

See EVIDENCE—CIVIL CASES—ENDORSEMENT . . . 3 B. L. R., Ap., 125

— Assignment and re-transfer by—

See STAMP ACT, 1869, ss. 34 AND 41.

[I. L. R., 3 Calc., 347]

ENDORSEMENT—continued.

— Forged—

See HUNDI—PROPERTY IN HUNDI—FORGED HUNDI.

[7 B. L. R., 275, 289, note

— on deed of sale.

See REGISTRATION ACT, 1877, s. 17.

[I. L. R., 2 Bom., 547]

— to allow third person to sue.

See PROMISSORY NOTE—CONSIDERATION.

[3 B. L. R., O. C., 120]

ENDORSEMENTS, LOSS OF NEGOTIABILITY OF NOTE BY BEING COVERED WITH—

See GOVERNMENT PROMISSORY NOTE,

[13 B. L. R., 359]

ENDOWMENT.

See CASES UNDER ACT XX OF 1863.

See CASES UNDER HINDU LAW—ENDOWMENT.

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

See ONUS PROBANDI—TRUST, REVOCATION OF — . . . 10 B. L. R., P. C., 19

1. — Religious endowment.—*Civil Procedure Code, 1877, s. 539.*—Section 539 of the Civil Procedure Code, 1877, does not apply to the case of an endowment for purposes religious as well as charitable. *KARUPPA v. ARUMUGA*

[I. L. R., 5 Mad., 383]

2. — *Suit for management of religious endowment.—Right of suit.—Act XX of 1863, s. 18.—Parties.—Jurisdiction of High Court.*—The plaintiffs, describing themselves as the Calcutta Tairo Pantee Annungo Punch Brethren, in whom (as they alleged) was vested the management and control of the temples, endowments, and worship of the Degumberry sect of Jains, and who formed the committee for the management of all the Jain charities as well in Calcutta as in all the other towns and places in India, brought a suit, praying, *inter alia*, for the construction of a will, and for a declaration of their rights thereunder as members of the said Punch, and to have property dedicated by the will to religious purposes ascertained and secured. *Held, per KENNEDY, J.*, in the Court below, that the description of the character in which the plaintiffs sued was uncertain and ambiguous; that, inasmuch as the property in question was not dewutter, the plaintiffs were not sebaits, and all they could claim, therefore, was a right of management; and that a mere manager, without some special power which the Hindu law confers on sebaits, could not institute such a suit; that the plaintiffs not being a corporation could not sue in a corporate character; that, assuming religious endowments had been created by the will, leave to bring the suit should have been obtained under section 18 of Act XX of 1863; and that, if the

ENDOWMENT.—Religious endowment—continued.

gifts in the will could be treated as charitable bequests, possibly the Advocate General could sue. *Held* on appeal, reversing the decision of the lower Court, that the right in which the plaintiffs sued was sufficiently shown, and that the object of the suit was not to assert any personal right of ownership in the plaintiffs. *Held*, further, that the Advocate General was not a necessary party, although it was desirable that such suits should be brought only with his consent, or by the leave of the Court. *Held*, further, that suits of this description do not fall under Act XX of 1863, but come under the ordinary jurisdiction of the Court, inherited from the Supreme Court, and conferred upon that Court by its Charter—a jurisdiction similar in its general features to that of the Lord Chancellor in England. **PANCHOOWEE MULL v. CHUMBOOLALL**

[I. L. R., 3 Cal., 563; 2 C. L. R., 121]

KALI CHURN GIRI v. GOLABI . 2 C. L. R., 128

RUP NARAIN SINGH v. JUNKO BYE

[3 C. L. R., 112]

3. ————— *Madras Regulation VII of 1817.—Order of Revenue Board appointing manager.—Suit by trustees for possession.*—The suit was brought by the trustees of certain pagodas for the recovery of six villages for the defendant, on behalf of the pagodas, and to declare a copper sannad, purporting to be an ancient grant on which defendant based his title, a forgery. The District Judge considered that the evidence sufficiently established that the title to the villages was in the temples and not in the defendant, but he was also of opinion that as defendant had been lawfully placed in management by the Board of Revenue in 1858, he was entitled to hold the villages for life. He therefore declared plaintiff's reversionary title as trustee of the temples on the death of the defendant. Defendant appealed from this decision as to the title and plaintiff appealed as to the part of the decree which refused him immediate possession of the property. *Held* by **LYNES, J.**, that the title to manage must reside in the pagoda if it did not reside in the defendant, that the evidence abundantly negated the title of the defendant, and that plaintiff was entitled to possess and manage the property as trustee of the temples. Upon the question whether plaintiff was precluded from recovering during the life-time of defendant, by reason of the order of 1858, placing defendant in possession.—*Held* that the Government could not create a valid title to more than they themselves possessed; that they had simply taken over the possession and management of the endowment and afterwards given it over to defendant; that by so doing they relieved themselves of the trust they had undertaken under Regulation VII of 1817, but did not thereby appoint defendant a manager under Regulation VII of 1817. **NALLATHUMBI BATTAR v. NELLAKUMARA PILLAI** . 7 Mad., 306

4. ————— *Hindu or Mahomedan religious endowment, Alienation or pledge of.—Bombay Act II of 1863, s. 8, cl. 3.—Common law of the country.*—Religious endowments

ENDOWMENT.—Religious endowment—continued.

in this country, whether they are Hindu or Mahomedan, are not alienable; though the annual revenues of such endowments, as distinguished from the *corpus*, may occasionally, when it is necessary to do so in order to raise money for purposes essential to the temple or other institution endowed, but not further or otherwise, be pledged. **Bombay Act II of 1863, section 8, clause 3**, contained no new law, but merely declared the pre-existing common law of this country. **NARAYAN v. CHINTAMAN** . I. L. R., 5 Bom., 393

5. ————— *Charity.—Family idols.—Sale of trust property in execution.—Suit by trustee to recover the property.—Limitation.*—The Hindu law, unlike the English law with respect to charities, makes no distinction between a religious endowment having for its object the worship of a household idol and one which is for the benefit of the general public. In execution of decrees against the plaintiff, as the representative of his deceased father and brother, certain lands were sold to the first defendant. The plaintiff sued to recover them, alleging that the former owner of the lands had assigned them to his (the plaintiff's) brother and himself (the plaintiff) and their descendants by a deed of gift to perpetuate the worship of the donor's household idol. *Held* that the plaintiff was entitled to recover the property. The gift was a valid one, creating a religious endowment under the Hindu law, and that the plaintiff's suit was not to set aside the sale, but was one by the trustee of the endowment to recover the property to which the limitation of twelve years was applicable. **RUPA JAGSHEE v. KRISHNAJI GOVIND** . I. L. R., 9 Bom., 169

ENGLISH COMMITTEE OF HIGH COURT.

————— *Dismissal of Munsif.—Power of Division Bench of High Court.*—A Munsif who had been dismissed by an order of the English Committee, consisting of four Judges of the High Court, applied to a Division Bench, consisting of the Chief Justice and **MITTER, J.**, to reconsider his case. The Chief Justice having dismissed his application, while **MITTER, J.**, considered that he was entitled to a rehearing, he appealed under clause 15 of the Letters Patent. The Court considered it unnecessary to enter into the merits of the questions raised, and held that the Munsif having been removed by an order of four Judges forming the English Committee, no Division Bench had any power to reconsider, or review, or set aside, or to order the Judges of the English Committee to reconsider, review, or set aside the decision of the English Committee. **IN THE MATTER OF THE PETITION OF HURISH CHUNDER MITTER** . 10 B. L. R., 79; 18 W. R., 209

IN RE DENONATH MULLICK

[10 B. L. R., 80, and 82, note

————— *Power of Judge acting in—*

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.

[I. L. R., 1 Cal., 219]

ENGLISH LAW.

See FALSE EVIDENCE.

[I. L. R., 7 All, 44]

See LIS PENDENS.

[2 Ind. Jur., N. S., 169]

See MORTGAGE—TACKLING.

[5 B. L. R., 463]

2 B. L. R., Ap., 45]

See PARSIS

I. L. R., 5 Bom., 506

[I. L. R., 6 Bom., 151]

See PARTNERSHIP — WHAT CONSTITUTES PARTNERSHIP.

[3 B. L. R., A. C., 238]

10 B. L. R., 312]

See TERRITORIAL LAW OF BRITISH INDIA.

[1 B. L. R., O. C., 87]

See TRESPASS—GENERAL CASES.

[I. L. R., 2 Mad., 232]

See VENDOR AND PURCHASER—LIEN.

[Marsh., 461]

1. ———— **Applicability of, to natives of India.**—It has always been the policy of the Courts of this country not to apply the strict rules of English law to natives of this country. *PARABDI SARANI v. MAHOMED HOSSEIN*

[I. L. R., A. C., 37]

2. ———— **Law in mofussil.**—*Bom. Reg. IV of 1827, s. 26.*—Although the English law is not obligatory upon the Courts in the mofussil, they ought, in proceeding according to justice, equity, and good conscience (Bombay Regulation IV of 1827, section 26), to be governed by the principles of English law applicable to a similar state of circumstances. *DADA HANAJI BARAJI JAGUSHEET*

[2 Bom., 38 : 2nd Ed., 36]

WHEEN v. LESTER . 2 Bom., 55 : 2nd Ed., 52

3. ———— **English rules of equity in mofussil.**—Instances in which the rules of English Courts of Equity have been applied in the mofussil, referred to. *WAMAN RAMCHANDRA v. DHONDIBA KRISHNAJI*

I. L. R., 4 Bom., 126

4. ———— **Advancement, Doctrine of.**—*Benami purchase.*—*Europeans in India.*—The English doctrine of advancement is applicable in India as between a father and daughter, both of English extraction and living under English law. The status of the daughter, under an alleged *bond fide* purchase, made by her father for her advancement when a minor, cannot be set aside except by positive proof that the father merely made use of her name as he would that of any servant or stranger, retaining the beneficial interest in the property for himself. *KISHEN KOOMAR MOITRO v. STEVENSON*

2 W. R., 141

5. ———— **Aliens, Law relating to.**—*Devise of lands for charitable purposes.*—*Statute of Mortmain.*—*Introduction of English law into India.*—The introduction of the English law into a conquered or ceded country does not draw with it that branch which relates to aliens if the acts of the Power introducing it show that it was introduced, not in all its branches but only *sub modo* and with the

ENGLISH LAW.—Aliens, Law relating to—continued.

exception of this portion. The English law incapacitating aliens from holding real property to their own use; and transmitting it by descent or devise, has never been introduced into the East Indies so as to create a forfeiture of lands held in Calcutta or the mofussil by an alien, and devised by a will executed according to the Statute of Frauds, for charitable purposes. *Semble.*—The Statute of Mortmain does not extend to the British territories in the East Indies . . . *MAYOR OF LYONS v. EAST INDIA COMPANY* . . . 1 Moore's I. A., 175

6. ———— **Inheritance, Law of.**—*English law how far applicable.*—The case of *The Mayor of Lyons v. The East India Company*, 1 Moore's I. A., 175, does not mean to decide that the Courts of this country are justified in adopting just so much of the law of inheritance, or of dower, or of any other law, as they consider equitable, and rejecting the rest. It only points out that there are certain portions of the English statute law which from their very nature were only passed for reasons connected with England, and which would not be applicable in India or any Colony of the British Crown,—e.g., the Mortmain Acts, the Law of Aliens, and the like. *SARKIES v. PROSONOMOYNE DOSSEH*

[I. L. R., 6 Calc., 794 : 8 C. L. R., 76]

7. ———— **Attorneys.**—*Statute 3 Jac. I., c. 7.*—Statute 3, Jac. I., c. 7, has not been extended to India. *WILKINSON v. ABBAS SIKRAR*

[3 B. L. R., O. C., 96]

8. ———— **Banking in mofussil.**—*Law of Merchants.*—The Law of Merchants is not applicable to banking transactions in the mofussil. *ALI v. GOPAL DASS*

13 W. R., 420

9. ———— **Bankruptcy.**—*Statutes 6 Geo. IV, c. 16, and 2 and 3 Will. IV, c. 114.*—*Proof of bankruptcy under English Commission.*—The statutes 6 George IV, cap. 16, and 2 and 3 William IV, cap. 114, made to facilitate the proof of bankruptcy and assignment in England, were held not to extend to the Courts in India, and in an action by the assignee of a bankrupt under an English Commission against a debtor, a native of India and resident within the jurisdiction of the Supreme Court at Calcutta, it was held that such evidence of the bankruptcy must be given as would have been required to prove the fact if no statutory regulations had been made. *CLARK v. ROOPALL MULLICK. CLARK v. DOORGAMONEY DOSSEH*

[2 Moore's I. A., 268]

10. ———— **Case law.**—*Application of English precedents to India.*—English precedents are only to be applied in India after being carefully weighed and tested with regard to the customs and habits of the people. *JUGGOBUNDU SHAW v. GRANT, SMITH & Co.*

2 Hyde., 129

11. ———— **Principles of English Common Law and Equity Courts.**—The different principles on which Courts of Law and Equity in England administer justice observed

ENGLISH LAW.—Case law—continued.

upon, and the necessity of bearing in mind this distinction when English cases are referred to pointed out. **PEDDAMUTHULATY v. TIMMA REDDI**

[2 Mad., 270]

See as to English cases *per* **MACPHERSON, J.**, in **PARRATI CHARAN MOOKERJEE v. RAMNARAYAN MATILAL**

[5 B. L. R., 398, at pp. 400, 401]

12. ——— Contracts.—Common law of England.—The requirements of the Common Law of England cannot, unless made applicable by legislation or sanctioned by well-established judicial usages, be imported into the construction of a contract made in this country, unless it be clear from the construction of the contract that the parties at the time then entered into it had such requirements in view, and intended that the contract should be controlled by them. **GREAT EASTERN HOTEL COMPANY v. COLLECTOR OF ALLAHABAD** . 2 Agta, Ex. O. C., 1

13. ——— Agreements under seal and by parol.—In agreements between natives of this country the law does not distinguish between those which are under seal and by parol, the English law to that effect not having been introduced into the country. **KRISHNA v. RAIYAPPA SHANBHAGA**

[4 Mad., 98]

14. ——— Equitable mortgage.—Mad. Reg. II of 1802, s. 17.—Madras Regulation II of 1802, section 17, enacts that in the absence of any positive law to the contrary in force in the Presidency of Madras, the decision of the Court is to be according to justice, equity, and good faith. The plaintiff was an Armenian, and the defendants Hindus, Mahomedans, and Christians. The plaintiff sought by the plaint to establish a lien on land, created by an equitable mortgage by deposit of title-deeds. *Held* (in the absence of any agreement that the transaction was to be governed by any particular local law) that under Madras Regulation II of 1802, section 17, the principles of English law respecting equitable mortgages applied. **VARDEN SETH SAM v. LUCKPATRY ROYJEE LALLAH**

[9 Moore's I. A., 303]

15. ——— Estoppel.—Approbation and reprobation of transaction.—The principle that a party cannot both approve and reprobate the same transaction is applicable to Indian cases. **MAKHANLALL v. SHIKRISHNA SINGH**

[2 B. L. R., P. C., 44: 11 W. R., P. C., 19
12 Moore's I. A., 157]

16. ——— Hundis. — Analogy between Hundis and Bill of exchange.—Application of English law.—Where the analogy between native hundis and English bills of exchange is complete, the English law is to be applied. **SUMBOONATH GHOSH v. JUDDOONATH CHATTERJEE** . 2 Hyde, 259

17. ——— Immoveable property.—Laws applicable to Bombay.—Lex loci.—Reality and personality.—The *lex loci* report of the Indian Law Commissioners and the introduction of English law into India discussed. Distinction taken, with refer-

ENGLISH LAW.—Immoveable property—continued.

ence to the observations of Lord Kingsdown as to Calcutta in the *Advocate General v. Surnomoyee Dossee*, 9 Moore's I. A., 425-426, between Bombay, which was held by the English in full sovereignty, and Calcutta, which was merely held by them as a factory. Statement of circumstances which led to the passing of Fergusson's Act, 9 George IV, cap. 33, and Act IX of 1837, relating to the immoveable property of Parsis. **NAOROJI BERAMJI v. ROGERS**

[4 Bom., O. C., 1]

18. ——— Insurance.—Applicability to Hindus.—Law where no principle of Hindu law is applicable.—Contract of insurance.—Where the defendants, underwriters of a policy of insurance on goods on board a vessel bound from Bombay to Calcutta, were Hindus, but no principle of Hindu law was applicable, the parties having selected the English language for the expression of their contract,—*Held* that the case was to be determined in accordance with the principles of English law. **HARRIDAS PURSHOTAM v. GAMBLE** . 12 Bom., 23

19. ——— Limitation, Law of.—Application of statutes to India.—The Statute of Limitations, 21 Jac. I., c. 16, extended to India. **EAST INDIA COMPANY v. ODITORHURN PAUL**

[5 Moore's I. A., 43]

BUCKMABOYE v. LULLOBHOY MORTTIGHUND

[5 Moore's I. A., 234]

It applied to Hindus and Mahomedans as well as Europeans in civil actions in the Supreme Court.

BUCKMABOYE v. LULLOBHOY MORTTIGHUND

[5 Moore's I. A., 234]

20. ——— Married woman's property.—Law applicable to Hindu converts.—The English law relating to a married woman's property, and the right of the husband therein, is not necessarily applicable to Hindu converts to Christianity. The rule of decision in such cases is the rule prescribed by equity and good conscience, which is in each case to refer the decision to the usages of the class to which the convert may have attached himself, and of the family to which he may have belonged. **PANDU v. SURBOMONGOLA DOSSEE** . 1 W. R., 22

21. ——— Notice, Doctrine of.—Priority of registered deed.—The English equitable doctrine of notice, where there is a contest as to the priority of a deed registered under Act XVI of 1834, or Act XX of 1866, over an unregistered deed of a date prior to those Acts, is applicable in India. **JIVANDAS KESHAVJI v. FRAMJI NANABHAI**

[7 Bom., O. C., 45]

22. ——— Oaths in Courts of Justice.—Statute 17 and 18 Vict., c. 125.—The English statute 17 and 18 Vict., cap. 125, does not apply to India. **VALU MUDALI v. SOMERBY** . 2 Mad., 246

23. ——— Prescription Act.—Law of mofussil.—The English Prescription Act does not apply to this country in the mofussil. **JOY PROKASH SINGH v. AMEER ALLY** . 9. W. R., 91

See CASES UNDER PRESCRIPTION.

ENGLISH LAW—continued.

24. ——— Primogeniture.—Law applicable to Portuguese in Bombay.—Law of.—The Portuguese inhabitants of the town and island of Bombay not having had their laws, and usages having the force of laws, preserved to them by the treaty by which Bombay was (1661) ceded to the English, are subject to English law, so far as the same has been introduced into Bombay, and has not since been varied by legislation. Where a Portuguese inhabitant of Bombay, being entitled to certain immovable estate in perpetuity, died intestate before the 1st of January 1866 (on which day the Succession Act, 1866, came into force), leaving two nephews by a sister as his next of kin, it was held that the elder of them, as heir-at-law of the intestate, was entitled to succeed solely to such immovable estate. *LOPES v. LOPES* **5 Bom., O. C., 172**

25. ——— Sheriff's sale.—Sale in execution of decrees.—Law in mofussil.—The law of the mofussil was the *lex rei sitæ* at Sheriff's sales, and controls or modifies the English law as to execution and delivery. *BROWN v. RAM COMUL GHOSH. GOPPE CHUNDER CHUCKERBUTTY v. RAM KOMUL GHOSH* **W. R., 1864, 179**

26. ——— Suicide.—Forfeiture of property.—The English law of forfeiture of the personal property of persons committing suicide, if it ever applied to Europeans in India, is not applicable to Natives. *Quære*,—Whether the law ever had existence as regards Europeans in India. *ADVOCATE GENERAL OF BENGAL v. SURNOMOYEE* **[1 W. R., P. C., 14: 9 Moore's I. A., 387]**

27. ——— Superstitious uses, Statute of.—The English statute as to superstitious uses is not applicable to the Courts in India, and those Courts have jurisdiction to entertain suits for the establishment and administration of native religious institutions. *ADVOCATE GENERAL v. VISHVANATH ATMARAM* **1 Bom., Ap., 9**
KHUSALCHAND v. MAHADDO GIRI . **12 Bom., 214**

28. ——— Trust, Declaration of.—Binding effect of voluntary declarations of trust.—Principle of Equity Courts.—*Quære*,—Whether Hindu law admits of the principle in which Courts of Equity in England hold a voluntary declaration of trust to be binding against the declarant. *VENKATACHELLA MANUJAKAREY v. THATHAMMAL* **[4 Mad., 460]**

29. ——— Wagers.—Statute 8 and 9 Vict., c. 109 (Games and wagers).—The statute 8 and 9 Vict., cap. 109, amending the law relating to games and wagers, does not extend to India. *RAMLALL THAKOORSHYDASS v. SOORJUNMULL DHOONDIMULL* **[4 Moore's I. A., 339]**

ENHANCEMENT OF PUNISHMENT.

See **MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.**
[I. L. R., 1 Mad., 289
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ENHANCEMENT OF PUNISHMENT—continued.

See **MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.**
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See **REVISION—CRIMINAL CASES—SENTENCES** **I. L. R., 6 All., 135**
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See **CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—ENHANCEMENT.**

ENHANCEMENT OF RENT.

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|--|------|
| | Col. |
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| 4. NOTICE OF ENHANCEMENT— | 1620 |
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| 5. GROUNDS OF ENHANCEMENT— | 1639 |
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See **CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—ENHANCEMENT OF RENT** **I. L. R., 2 Calc., 474**
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See **CASES UNDER DECLARATORY DECREE, SUIT FOR—RENT AND ENHANCEMENT OF RENT.**

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[3 B. L. R., A. C., 230

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[B. L. R., Sup. Vol., 25, 202

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5 W. R., Act X, 88

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[I. L. R., 3 Calc., 781

1. RIGHT TO ENHANCE.

1. ——— Priority of title or tenure.

Inference of right to rent.—A suit for enhancement implies such a priority of title or tenure existing between the parties that a claim to some rent is legally inferrible from it. The decision in *Surnomoyee v. Suttess Chunder Roy*, 10 Moore's I. A., 123, commented on. SATTASARAN GHOSAL v. MOHESH CHUNDER MITTER

[2 B. L. R., P. C., 23; 11 W. R., P. C., 10

12 Moore's I. A., 263

2. ——— Suit not brought under Rent Act.—*Suit to assess land at enhanced rate.*—Act X of 1859.—A suit to assess land and recover rents at an enhanced rate must be dismissed if not brought under some section of the Rent Act. SREEDHUR JHA v. DAREE DUTT

9 W. R., 170

See LALUNMOHEE v. AJODHYA RAM KHAN

[23 W. R., 61

3. ——— Suit to assess land paying no rent.—A suit to assess rent upon land paying no rent at all is not a suit for enhancement of rent. BABODA KANT ROY v. RADHA CHURN ROY

[13 W. R., 163

ENHANCEMENT OF RENT—continued.

1. RIGHT TO ENHANCE—continued.

4. ——— Lakhiraj tenure.—*Resumption,*

Necessity of, before enhancement.—A decree in a suit for resumption must be obtained before rent can be recovered against a tenant holding under a lakhiraj tenure. HILL v. KHOWAJ SHEIKH MUNDUL

Marsh., 554; 2 Hay, 663

ROMESH CHUNDER DUTT v. GOOROO DOSS NUNDEE

W. R., 1864, 204

MAHOMED MYANBOOL HEK v. MAHOMED SYUD KHAN

1 W. R., 15

NUND KISHORE LAL v. KUREEM BUKSH KHAN

[5 W. R., Act X, 62

MODER HUDDIN JOWARDAR v. SANDES

[12 W. R., 439

5. ——— Hereditary conditional tenure.—*Resumption, Necessity of, before enhancement.*—*Descendant of grantee of jaghir.*—A suit to enhance is not maintainable against the descendant of the grantee of a hereditary conditional jaghir. The zemindar must first sue to resume on the ground that the jaghir has been determined by breach of the condition through neglect of the service. NILMONEY SINGH DEO v. RAMGOPAUL SINGH CHOWDERY

Marsh., 518

6. ——— Punchukkee lakhiraj lands.—

Necessity for resumption before enhancement.—A zemindar may sue to enhance punchukkee lakhiraj lands without first suing for their resumption. MADHUB CHUNDERA JANAH v. RAJKISEN MOOKERJEE

7 W. R., 86

7. ——— Tullubi bromuttur tenure.—

Necessity for resumption before enhancement.—A tullubi bromuttur tenure is not a lakhiraj tenure, and it is not necessary for a landlord to bring a suit for its resumption before he can sue for enhancement of its rent. NILMONEY SINGH v. CHUNDER KANT BANERJEE

14 W. R., 251

8. ——— Beng. Reg. VII of 1822, s. 9.—

Act X of 1859, s. 18.—*Right to enhance without notice.*—Section 9, Regulation VII of 1822, related only to settlement, not to collection of rents, and did not entitle a person claiming from Government as a private zemindar to enhance rents without proceeding under the law for the collection of rent, and without giving notice of enhancement under section 13, Act X of 1859. NAWAB NAZIM OF BENGAL v. RAM LALL GHOSH alias JOGABUNDHOO GHOSH

[6 W. R., Act X, 5

9. ——— Rent paid in kind.—*Conversion into rent paid in money.*—A zemindar may sue to convert rents paid in kind into rents paid in money. The fact of the ryot having paid in kind for a number of years is no bar to enhancement. THAKOOR PERSHAD v. MAHOMED BAKUR

[8 W. R., 170

10. ——— Assignment of rents to creditor for a term beyond existing lease.—*Right on expiration of term.*—The mere circumstance that the landlord has assigned to a creditor

ENHANCEMENT OF RENT—continued.**1. RIGHT TO ENHANCE—continued.****Assignment of rents to creditor for a term beyond existing lease—continued.**

a certain amount of the rents for certain years extending beyond an existing lease, does not prevent him from enhancing the rent after the expiration of the term. *ESSEN CHUNDER MANICK v. SEEBJOY THAKOOR* . . . *Marsh., 435 : 2 Hay, 503*

11. ——— Sale of tenure in execution of decree.—Bar to enhancement.—A landowner is not estopped from enhancing rent by the circumstance that he has caused the tenure to be sold under a decree. *SURNOMOYE v. ADOITO CHURN ROY* [*Marsh., 605*

12. ——— Farmer for a term of years.—Absence of stipulation prohibiting enhancement.—A farmer for a term of years is entitled to enhance the rent of ryots holding under him when there is no condition or stipulation in his lease precluding him from so doing. *RUSHTON v. GIRDHARAN THWARAN* . *Marsh., 331 : 2 Hay, 394*

13. ——— Ijaradar.—Absence of stipulation prohibiting enhancement.—An ijaradar is entitled to enhance the rent of ryots holding under him where there is no condition or stipulation in his lease precluding him from so doing. *DOORGA PRASAD MYTHER v. JOYNARAIN HAZRA* [*I. L. R., 2 Cal., 474*

14. ——— Dur-ijaradar.—A dur-ijaradar can enhance the rents of the estate of which he holds the sub-lease. *GUNGARAM v. UJOODHYARAM MYTHER* *2 W. R., 158*

15. ——— Auction-purchaser.—An auction-purchaser cannot eject a ryot having a right of occupancy, or enhance his rent, except in the manner prescribed by law. *DABEE BHUGGUT v. BEECHUN RAOOT* . *W. R., 1864, Act X, 111*

16. ——— Act I of 1845.—An auction-purchaser under Act I of 1845 is not entitled to sue to enhance the rent of a tenant, not being a ryot or cultivator, without his consent. *JUGGODESHWARY DOSSIA v. UMA CHURN ROY* [*7 W. R., 237*

17. ——— Beng. Reg. XLIV of 1793, s. 5.—According to the decision of the Privy Council in the case of *Surnomoyee v. Sutees Chunder Roy Bahadoor*, 10 *Moore's I. A., 123*, the right of an auction-purchaser under section 5 of Regulation XLIV of 1793 is limited to raising the rent of a talook created by the defaulter to what is demandable from it according to the pargana rates prevailing either at the time when the talook is created or at the time when the auction-purchase takes place; and he cannot demand any higher rent, even if, at any subsequent time, such higher rent be in accordance with the prevailing current rate. *MOHINY MOHUN ROY v. IOHAMOYEE DASSHA* [*I. L. R., 4 Cal., 612*

ENHANCEMENT OF RENT—continued.**1. RIGHT TO ENHANCE—continued.**

18. ——— Inamdar.—Tenants in possession before grant of inam.—An inamdar, though he cannot eject his tenants who have been in possession before the grant of the inam as long as they pay the rent due for their land, may nevertheless raise such rent at his pleasure (they not having acquired a prescriptive title), and is not restrained in doing so by the rates fixed by the Government survey. *HARI BIN JOTI v. NARAYAN ACHARYA* . *6 Bom., A. C., 23*

19. ——— Miras.—Limited power to enhance.—An inamdar's power to enhance the rent of mirasi tenants is limited. He cannot demand more rent than what is fair and equitable according to the custom of the country. *PRATAPRAV GUJAR v. BAYAJI NAMAJI* . *I. L. R., 3 Bom., 141*

20. ——— Permanent tenant.—In every part of India the Government or its alienee is debarred, if not by law (as in Bengal)—yet by the custom of the country, from enhancing the assessment of permanent tenants beyond a certain limit. What that limit is, must be determined by the circumstances of each case. In a suit by an inamdar, holding under a grant from Scindia made in 1793, against his permanent tenant for an enhanced rent, the Court, in the absence of law or contract to the contrary, affirmed the plaintiff's right to enhance the assessment to the extent to which, according to the old custom of the country, Scindia would have been entitled to enhance it; and upon a virtual admission of the defendant allowed enhancement to the extent of one half the produce. *PARSOTAM KESHAVDAS v. KALYAN RAYJI* . *I. L. R., 3 Bom., 348*

21. ——— Nij-jote lands held by tenant without right of occupancy.—Beng. Act VIII of 1869, ss. 8, 14, 15.—Notice to quit.—A landlord seeking to obtain an enhanced rate of rent on account of nij-jote land held by a tenant without a right of occupancy has no right to obtain a judicial assessment upon the footing of a notice under Bengal Act VIII of 1869, sections 14 and 15. His right in accordance with section 8 is to make his own terms with the tenant or to turn him out of occupation. This he can do by serving the tenant with a reasonable notice to quit unless he agrees to pay the rent required, and if the tenant continues in occupation he must be taken to have agreed by implication to pay the said rent. *JANOO MUNDUR v. BRIJO SINGH* . *22 W. R., 548*

22. ——— Lessee of house.—Rent of sub-tenant.—The lessee of a share of a house has a right to raise the rent of such share, while in the occupation of a sub-tenant without a lease, after due notice of the increased rate, and to proceed to eject him if he refuses to pay the higher rent, even though he has been in possession for many years. *RAM LALL v. CHUMMON GHUTTUOK* *24 W. R., 271*

23. ——— Shilatri lands.—Bom. Reg. I of 1808, s. 4.—Right of inamdars to raise assessment on shilatri lands.—Government, by an indenture dated the 25th January 1819, conveyed to A. and B., and their heirs and assigns, certain villages

ENHANCEMENT OF RENT—continued.**1. RIGHT TO ENHANCE—continued.****Shilatri lands—continued.**

in the island of Salsette, with the exception of such spots of shilatri tenure as might be therein, or on any part thereof, which could only become the property of *A.* and *B.*, on their purchasing the same from the proprietors. Since 1819, the holders of these shilatri lands had paid to the grantees and their heirs assessment (or rent) at a fixed rate which, before the grant, they used to pay to Government. In an action brought by an heir of *B.* and *A.* in 1868 to recover an enhanced rent or assessment levied on these lands,—*Held* that the effect of the exception in the indenture of 1819 being to throw upon the plaintiff the burden of proving his right to enhance the rent (or revenue), which he had failed to do, and Regulation I of 1803, section 4, clauses 1 and 2, containing admissions by Government (which then was the immediate landlord of the shilatri lands) that Government itself had no such right, plaintiff was consequently not entitled to raise the rent. *DADIBHAI JAHANGIRJI v. RAMJI BEN BHAI* . 11 Bom., 163

2. LIABILITY TO ENHANCEMENT.**(a) GENERAL LIABILITY.**

24. ——— Ryots having right of occupancy.—No tenures are liable to enhancement of rent by judicial proceedings except the tenures of ryots having right of occupancy, unless on the foundation of custom or of agreement expressed or implied. *SURNOO MOY v. BLUMHARDT*

[9 W. R., 552]

CHUNDER COOMAR BANERJEE v. AZEEMOODEEN
[14 W. R., 100]

25. ——— Ryots with right of occupancy.—In the absence of express stipulation or of a right such as is mentioned in sections 3 and 4, Act X of 1859, all ryots having rights of occupancy are liable to have their rents enhanced, if such rents are below the rate payable by the same class of ryots for land of a similar description, and with similar advantages in the places adjacent. *PUHLWAN THAKOOR v. GODOORAN KOONWAR*

[W. R., F. B., 142]

26. ——— Ryots with stipulation prohibiting enhancement.—*Agreement made before Act X of 1859.*—If a zemindar has come under any valid and binding engagement with the ryot to the effect that the rent shall not be enhanced during the term of the settlement, or during any other term, Act X of 1859 gives him no privilege to set aside that contract. *SHIB SINGH v. BROOF SINGH*

[2 Agra, 303]

BYJNATH v. CHUTTER SINGH . 3 Agra, 181

27. ——— Settlement with Government for higher revenue.—If a ryot has a right of occupancy, his rate of rent can only be enhanced in the mode prescribed by law: if he has not, his landlord can only claim arrears of rent on the ground of actual agreement, express or implied. Such

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(a) GENERAL LIABILITY—continued.****Ryots with stipulation prohibiting enhancement—continued.**

claim cannot be made at an enhanced rate simply because the landlord has settled with Government at a higher rate of revenue. *ROOPUN ROY v. PURDEEP SINGH* 22 W. R., 10

28. ——— Tenure not agricultural.—*Tenant at inadequate rent.*—Except in the case of agricultural holdings, landlords and tenants cannot be compelled to enter into a contract against their inclination, nor can a tenant who holds at an inadequate rent and who has no right to hold at a fixed rate be compelled by proceedings in the Civil Court to pay a higher rate of rent. *LALUNMOYEE v. AJOODHYA RAM KHAN* 23 W. R., 61

See KYLASH CHUNDER SINGAR v. WOOMANUND ROY 24 W. R., 412

29. ——— Intermediate tenants
Hereditary and transferable tenure.—*Act X of 1859, s. 15.*—Where a tenure was or has become hereditary and transferable, and the rent has not been changed from the time of the Perpetual Settlement, the tenants (being intermediate between proprietor and ryots) are protected from enhancement by section 15, Act X of 1859. Tenants, intermediate between proprietors and ryots, are subject to the Rent Act, which contemplates under-tenants as distinct from ryots, and contains provisions relating to both classes. *DHUPUT SINGH v. GOOMAN SINGH*
[9 W. R., P. C., 3: 11 Moore's I. A., 433]

30. ——— Act X of 1859, ss. 13 and 17.—Where a notice under section 13, Act X of 1859, clearly recognised defendants as talookdars, and at the same time sought to enhance rent under section 17, it was held (following a decision of the Privy Council), *Dhuput Singh v. Gooman Singh*, 9 W. R., P. C., 3, that a suit for enhancement would not lie, as section 17 did not apply to intermediate holders, but only to ryots having rights of occupancy. *BUDURBOONISSA CHOWDHRAIN v. CHUNDER COOMAR DUTT* 10 W. R., 455

31. ——— Act X of 1859, s. 17.—The holding of an intermediate tenure does not remove the holder from the category of ryots whose lands may be enhanced under section 17, Act X of 1859; nor does the sub-letting of part of a tenure alter the original character of the ryot's holding. *UMA CHURN DUTT v. UMA TARA DABEE*
[8 W. R., 181]

HURISH CHUNDER CHOWDHEY v. RAM CHUNDER CHOWDHEY 18 W. R., 528

S. C. on review, RAM CHUNDER CHOWDHEY v. HURISH CHUNDER CHOWDHEY
[19 W. R., 196]

32. ——— Act X of 1859, s. 17.—There is no class of persons intermediate between the tenure-holders and the ryots entitled to a notice of enhancement under section 17, Act X

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(a) GENERAL LIABILITY—continued.****Intermediate tenants—continued.**

of 1859. **RAM CHUNDER CHOWDHRY v. HURISH CHUNDER CHOWDHRY** . . . 19 W. R., 196

Affirming on review . . . S. C. 18 W. R., 528

33. ———— Act X of 1859, ss. 13-16.—Under sections 13 to 16 of Act X of 1859 the rent of a tenant who is a middleman may be enhanced on notice on the same grounds (except as provided in those sections) on which he was liable to enhancement prior to the passing of that Act. **GRISH CHUNDER GHOSH v. RAMTUNOO BISWAS** [12 W. R., 449]

34. ———— Tenants assessed at Government settlement.—Zemindars with percentage for risk and labour of collection.—Act X of 1859, s. 23, cl. 3.—Held that the plaintiff, whose land at the time of the settlement was assessed with a proportionate Government demand, was not liable to enhancement by zemindars who, in their right, were restricted to get a certain percentage only for risk and labour of collection by the order of settlement officer. **MOOSEY KHUTERNY v. MAHOMED TUQUE**

[1 Agra, Rev., 3]

WAZIR ALI v. DUNNE . . . 1 Agra, Rev., 15

35. ———— Lands held in excess of pottah.—Act X of 1859, s. 14.—The words "rent free" in clause 14, section 1, are not used in contradistinction to, but merely as showing the meaning of, the term "lakhiraj." Where lands in excess of the number of bighas specified in a pottah have been held for more than sixty years, and have always been considered to form part of what was covered by the pottah, they are held to have been occupied as land included in the pottah since before the Decennial Settlement, and the rent of them cannot therefore be enhanced. **JANOKER BULLUB CHUCKERBUTTY v. NOBIN CHUNDER ROY CHOWDHRY**

[2 W. R., Act X, 33]

36. ———— Act X of 1859, s. 17, cl. 3.—Suit for kabuliati.—Where a zemindar sued a ryot for enhancement of rent on the ground that he was holding more land than he paid for, the land in excess not being included in any pottah which had been granted to the ryot, but being within his "jote,"—Held that the zemindar could properly sue for enhancement of rent under Act X of 1859, section 17, clause 3, and the Court would grant such relief, notwithstanding that the plaint also asked that execution of a kabuliati might be ordered after determining the rate of rent. **MUKTAKESHI DEBEE CHOWDRAI v. SAJED SHEIK** . . . 2 B. L. R., Ap., 5

37. ———— Cultivators related to zemindar.—Assessment of rent.—Rate of rent.—Held that mere relationship does not constitute a class of cultivators, and a zemindar who allowed some of his kindred to hold at favourable rates cannot be compelled to show similar favour to other cultivators who

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(a) GENERAL LIABILITY—continued.****Cultivators related to zemindar—continued.**

may be equally near in relationship to him. **DABEE SINGH v. PUNCHUM SINGH**

[2 Agra, Part II, 203]

(b) PARTICULAR TENURE-HOLDERS AND TENURES.

38. ———— Jungleboory tenants.—Jungleboory tenants are liable to enhancement. **DHUNPUT SINGH v. GOOMAN SINGH**

[W. R., 1864, Act X, 61]

HARAN CHUNDER GHOSH v. GOOROO CHURN SIRCAR . . . 10 W. R., 421

39. ———— Moostagira.—Act X of 1859, ss. 15 and 16.—Moostagira are protected from enhancement, not as ryots, but as intermediate tenants, under sections 15 and 16, Act X of 1859. **DHUNPUT SINGH v. GOOMAN SINGH**

[W. R., Act X, 1864, 61]

Affirmed by Privy Council in **DHUNPUT SINGH v. GOOMAN SINGH** . . . 10 Moore's I. A., 423

[W. R., P. C., 3]

40. ———— Ex-maafeedar.—Rent-free holding.—Held that an ex-maafeedar, whose land at the time of settlement was separately assessed, and the sum so assessed made payable through the zemindar, cannot be treated as a mere ryot liable to enhancement. **KEDAR POORNE v. KULLAN KHAN**

[1 Agra, Rev., 56]

See **HUMEDOOLAH KHAN v. PRAN SOOKH**

[3 Agra, 280]

41. ———— Farmers holding over.—Act X of 1859, s. 13.—Section 13, Act X of 1859, did not apply to farmers holding on after the expiry of their lease, who were therefore liable to enhancement without notice. **NATHOORAM SHAHA v. DOORGA MANJEE** . . . W. R., 1864, Act X, 92

42. ———— Purchaser of transferable tenure.—Act X of 1859, s. 6.—The purchaser of a transferable tenure, under which the rent cannot be enhanced, is entitled to the benefit of it, although he may not have occupied for twelve years, or acquired a right of occupancy under section 6, Act X of 1859. **FISHER v. NUNDOO COOMAR MUNDIE**

[Marah., 625]

43. ———— Purchaser from ryot at sale in execution.—Liability to enhancement.—A purchaser at a sale in execution of a decree of the right and interest of a person in the position of a ryot holding at a low and favourable rate (the privilege being personal to him and his family) is not entitled to exemption from enhancement. **FLOWERT v. KOOTOOB HOSSEIN** . . . 2 Agra, 274

44. ———— Under-tenants.—Tenants holding directly from Government.—In a suit against the Government for a declaration that certain lands held by the plaintiffs were not liable to enhancement of rent, it appeared that the Government had

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(b) PARTICULAR TENURE-HOLDERS AND TENURES—continued.****Under-tenants—continued.**

in 1825 granted, at the rates then prevailing in the neighbourhood, the lands in question to the predecessors in title of the plaintiffs; that possession had been taken by the Government shortly afterwards, but again restored under an order of the Board of Revenue in 1827, a settlement being made at R2-8 per kani; that in 1248 it was arranged that the plaintiffs should pay their rent through a talookdar who had obtained a settlement for a term of thirty years over the whole of the chur in which the lands held by the plaintiffs were situate; that on the term of thirty years expiring, it was not renewed, and that the Government subsequently gave the plaintiffs notice of enhancement. *Held* that the plaintiffs were not under-tenants, and that, under the circumstances, their tenure was not liable to enhancement. **SECRETARY OF STATE v. RADHA PRESHAD WASTI**

[9 C. L. R., 189]

45. — Sale for arrears of rent.—Under-tenures fall with the original tenure of the defaulter, and are liable to enhancement by the purchaser of the tenure sold for arrears of rent. **TARUCKNATH PORAMANICK v. MCALLISTER**

[6 W. R., Act X, 34]

46. — Khamar lands.—*Act X of 1859, s. 4.*—Section 4, Act X of 1859, makes no exception as to khamar lands. **RAM COOMAR MOOKERJEE v. RUGOONATH MUNDUL**

[1 W. R., 356]

47. — Mandidari tenure.—*Tenant with right of occupancy at rates varying with revenue.*—Mandidari tenure is the tenure of a tenant with rights of occupancy who is entitled to hold at rates varying with the revenue, and he possesses privileges superior to those of an ordinary ryot. His rates of rent are not liable to enhancement. **BUNKUT NUSSEYA v. GOUREE SINGH**

[2 N. W., 369]

48. — Talook created before accession of British Government.—*Act X of 1859, s. 15.*—A talook created before the accession of the British Government, held at an unvaried rent from before the Perpetual Settlement, is protected from enhancement by section 15 of Act X of 1859.

GORIND CHUNDER DUTT v. HUBRONATH ROY
[1 Ind. Jur., N. S., 52: 5 W. R., Act X, 10]

49. — Lessees, right of, to collect lac insects from trees.—*Act X of 1859.*—Act X of 1859 does not entitle a lessor to enhance the rent payable by a lessee on account of right leased to the latter to collect lac insects from trees growing on the lands of the former. **GOPAL SINGH MOORAH v. SUNKURE PAHARIN**

[23 W. R., 458]

50. — Sursory jote.—*Act X of 1859, ss. 3 and 4.*—A sursory jote tenure is not exempt from the operation of sections 3 and 4, Act X of 1859, but is protected from enhancement on proof of twenty years' payment of uniform rent. **DOORGA MOYEE DOSSEA v. KASSISSUR DEBRA CHOWDHRAIN**

[4 W. R., Act X, 20]

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(c) LANDS OCCUPIED BY BUILDINGS AND GARDENS.**

51. — Lands with buildings.—*Garden ground.*—*Non-agricultural land.*—Land held ancillary to the enjoyment of a house, as, for instance, a garden or compound, is not subject to enhancement of rent under the Rent Acts. Acts X of 1859 and XIV of 1863 do not apply to land occupied by houses, but only to land held for agricultural purposes. **POWELL v. WAHID KHAN**

[1 N. W., 133: 7 Ed. 1873, 217]

KALEN MOHAN CHATTERJEE v. KALI KISTO ROY
[2 B. L. R., Ap., 39: 11 W. R., 188]

52. — Garden lands.—*Act I of 1845, s. 26, cl. 4.*—*Notice of enhancement.*—In order to obtain the benefit of clause 4, section 26, Act I of 1845 (protecting garden lands from enhancement), it is not sufficient that the notice of enhancement should describe the lands as garden lands, but there must be a clear finding that the lands have been held as such under *bond fide* leases. **SIDDESSUREN CHOWDHRAIN v. KISSOREKANT GOSSAIN**

[W. R., 1864, Act X, 101]

53. — Lands situated in a town.—*Beng. Rent Act, 1869.*—A suit cannot be maintained under Bengal Act VIII of 1869 for rent at enhanced rates of land not used for agricultural or horticultural purposes, but situated in a town. **MADAN MOHAN BISWAS v. STALKART**

[9 B. L. R., 97: 17 W. R., 441]

54. — Lands for building purposes.—*Bastu land.*—Bastu land (land used for sites of houses) situated in a town cannot form the subject of suits under Act X of 1859 for enhancement. Bastu land, which is the site of a house occupied by a ryot engaged in cultivating the surrounding lands, does fall under the provisions of Act X of 1859. **NAIMUDDA JOWADDAR v. MONCRIEFF**

[3 B. L. R., A. C., 283]

S. C. NYMOODDEE JOARDAR v. MONCRIEFF
[12 W. R., 140]

KAILAS CHUNDER SIKAR v. DURGADAS TARAYDAR
[3 B. L. R., A. C., 284, note]

Contra, **KENNY v. GREENDRUR MANJEE**
[W. R., 1864, Act X Rul., 9]

55. — Lands for building and horticultural purposes.—Land had been let under different pottahs to a man for building and horticultural purposes, to be enjoyed by him, his sons, and his sons' sons for ever at a rent mentioned in the pottahs. *Held* that though the suit was cognisable by the Collector, the rent was not liable to enhancement. **KAILAS CHANDRA ROY v. HIRALAL SEAL**

[2 B. L. R., A. C., 93: 10 W. R., 403]

56. — Land with buildings.—*Mokurrari.*—Where a pottah was granted at "mokurrari" rates, and the lands were taken for erecting buildings thereon, and carrying on the works of an

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(c) LANDS OCCUPIED BY BUILDINGS AND GARDENS—continued.****Land with buildings—continued.**

indigo factory, it was held to indicate a building lease at a fixed rent, and a suit for enhancement would not lie in respect of such land. *KERRY v. MADANLAL DOSS* . . . 1 B. L. R., S. N., 11

57. ———— *Beng. Act VIII of 1869.*—A suit for enhancement of rent under Bengal Act VIII of 1869 will not lie in respect of lands occupied by buildings. *BRUJO NATH KUNDU CHOWDHRY v. STEWART* [8 B. L. R., Ap., 51: 16 W. R., 216

58. ———— *Jurisdiction.*—A suit for enhancement of rent of land covered with buildings will not lie in the Revenue Court under clause 4, section 23 of Act X of 1859, but is cognisable only by a Civil Court. *DURGA SUNDARI DAS v. BIBI UMDATANNISSA* [9 B. L. R., 101: 18 W. R., 284

On appeal from S. C. in which Judges differed [17 W. R., 151

KHAIRUDDIN AHMED v. ABDUL BAKI [8 B. L. R., A. C., 65: 11 W. R., 410

CHURCH v. RAMTANU SHAHA [9 B. L. R., 105, note: 11 W. R., 547

RAMDHUN KHAN v. HARADHAN PARAMANICK [9 B. L. R., 107, note: 12 W. R., 404

IN RE BRAMMAMTY BEWA (MITTER, J., dissenting) . . . 9 B. L. R., 109, note [14 W. R., 252

59. ———— A plaintiff brought a suit for enhancement of rent of lands occupied with buildings, under Bengal Act VIII of 1869. *Held, per E. JACKSON, J.*, that, though Bengal Act VIII of 1869 does not apply to lands used for building purposes, the Civil Court has jurisdiction to determine suits concerning the rent of such lands, and therefore had jurisdiction to entertain the present suit. *Held, per MITTER, J.*, that the word "land" in Bengal Act VIII of 1869 is used in its ordinary sense, quite irrespective of the purposes for which it is applied; and that a suit for enhancement of the rent of land on which a house is built will lie under Bengal Act VIII of 1869. *BAJANATH KUNDU CHOWDHRY v. LOWTHER* . . . 9 B. L. R., 121

S. C. BROJONATH KOONDOL CHOWDHRY v. GOPINATH SHAHA . . . 17 W. R., 188

60. ———— **Land for building purposes.**—*Basta lands.*—*Oodbasta lands.*—When lands are liable to be assessed with rent as *basta*, and when as *oodbasta* lands. *PREM LAL CHOWDHRY v. BROWN* [6 W. R., Act X, 92

61. ———— **Land forming part of street in town.**—*Beng. Act VIII of 1869.*—*Land with buildings on it.*—Bengal Act VIII of 1869 relates only to agricultural holdings, and its provisions have no application to land forming part of a street in a

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(c) LANDS OCCUPIED BY BUILDINGS AND GARDENS—continued.****Land forming part of street in town—continued.**

town. The mere fact that a building has been erected on a piece of land with the consent of the proprietor does not give the occupant a right to hold the land perpetually at the same rate; and if the proprietor with an ultimate view of raising the rent, brings a suit for ejectment, he has a right to have his title to eject tried in that suit. *COLLECTOR OF MONGHYR v. MADAR BUKSH* . . . 25 W. R., 136

62. ———— **Land let for building purposes.**—A suit for enhancement of rent, in pursuance of a notice to pay the enhanced rent or quit the land within three months, cannot be maintained where the land in question was originally let by the ancestor of plaintiffs to the ancestor of defendants for building purposes. *PURNO CHUNDER ROY v. SADUT ALI* . . . 2 C. L. R., 31

63. ———— **Land for purpose of silk factory.**—*Enhancement of rent, Suit for.*—*Beng. Act VIII of 1869, s. 14.*—*Notice of enhancement.*—Plaintiff having served notice of enhancement, in terms of section 14 of the Bengal Rent Act VIII of 1869, of certain lands held by defendants on which reservoirs and buildings for the purposes of a silk filature had been constructed, brought a suit for such enhancement under Act VIII of 1869. The lower Court dismissed the suit, in spite of a statement in the plaint that the suit was brought under the latter Act on the ground that the rent of the tenure was not enhanceable under the Rent Law. *Held* that the lower Court ought not to have refused to decide the suit in the form in which it was brought, but ought to have enquired as to the nature of the tenancy, whether it was held at a fixed rate or not. *Held, further*, that although the suit was brought under the general law of procedure, the notice was not vitiated by the fact that the reasons assigned for the enhancement were reasons taken from the Rent Law applicable to the case of ryots possessing rights of occupancy. *COOMAR POROSH NARAIN ROY v. WATSON & Co.* [9 C. L. R., 548

64. ———— **Lease of land for building.**—Perpetual leases for building are only protected as held at a fixed rate, when the rent is fixed by the original leases. *SURBOMUNGULA DOSSEE v. SUTTISH CHUNDER ROY* . . . 2 W. R., 231

65. ———— **Dwelling-houses.**—A ryot who takes a pottah or gives a *kabuliat* for his homestead is not entitled to the privileges granted to those who erect "dwelling-houses" on leased lands, and is not protected from enhancement. *NURFER CHUNDRA SAHA v. GOSSAIN JYSINGH BHARUTTER* . . . 3 W. R., Act X, 144

66. ———— **Dwelling-house in village.**—*Jurisdiction of Revenue Court.*—A suit for enhancement of rent of a dwelling-house in a village is cog-

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(c) LANDS OCCUPIED BY BUILDINGS AND GARDENS—continued.****Dwelling-house in village—continued.**

isable by the Collector. **ABDUL HAMID v. DONGA-
RAM DUTT** **3 B. L. R., Ap., 133**

KALSH KISHEN BISWAS v. JANKEE

[**8 W. R., 250**

67. ——— Lands appurtenant to a dwelling-house.—*Reg. XIX of 1814, s. 9.*—The defendant had been declared entitled, under section 9, Regulation XIX of 1814, to hold certain lands as attached to his dwelling-house at an equitable rent payable to the landlord. The landlord subsequently sued in the Revenue Court for enhancement of rent of these lands. *Held, per GLOVER, J.,* that the rent so fixed on that land must be considered the fixed rent of the homestead of the house and ground, and not therefore capable of enhancement. **KHAIRUDDIN AHMED v. ABDUL BAKI**

[**3 B. L. R., A. C., 85; 11 W. R., 410**

68. ——— Land on which shop is built.—*Jurisdiction of Revenue Court.*—*Act X of 1859, s. 28.*—A suit will not lie in the Collector's Court to enhance the rent of land on which a shop stands, the shop being the thing for which rent is paid, and the land merely an adjunct to it. **MADAN SINGH v. MADAN RAM DAS** **1 B. L. R., S. N., 11**

69. ——— Lands leased for building a school and church.—*Jurisdiction of Revenue Court.*—Revenue Courts have no jurisdiction in a suit to recover arrears of rent at an enhanced rate from a tenant to whom land had been leased for the express purpose of building a school and a church. **SURMOYOY v. BLUMHARDT** **9 W. R., 562**

(d) DEPENDENT TALOOKDARS.

70. ——— Beng. Reg. VIII of 1793, ss. 49, 51.—A dependent talookdar, whose tenure was in existence before the Permanent Settlement, is entitled to protection under section 49, Regulation VIII of 1793, unless his zemindar can prove a title to enhance rent under section 51 of that law. **RADHAKA CHOWDRAI v. RAM MOHUN GHOSH** . **1 W. R., 367**

71. ——— s. 51.—*Actual proprietors.*—The "dependent talookdars" mentioned in Regulation VIII of 1793 are actual proprietors and not talookdars whose talooks are held under documents granted by proprietors which do not transfer property in the soil. The defendant was therefore held not exempt from liability to enhancement as being one of the latter. **SUTTYANUND GHOSAL v. HURO KISHORE DUTT** . **15 W. R., 474**

72. ——— Act X of 1859, s. 15.—A dependent talook created before the decennial settlement is protected from enhancement by section 51, Regulation VIII of 1793, except under the circumstances therein mentioned. In a suit by a zemindar for enhancement, brought after Act X of 1859 came into operation, against the holder

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(d) DEPENDENT TALOOKDARS—continued.****Beng. Reg. VIII of 1793, s. 51—continued.**

at a fixed rent of a dependent talook, the latter is protected from enhancement by the provisions of section 15 of that Act, notwithstanding decrees pronounced in previous litigation between the parties declaring the zemindar's right to enhance, and directing that the rent of the talook should be assessed at pergunnah rates, if it appear that the rent never has been assessed at pergunnah rates and never has been enhanced, but has remained unchanged from the time of the Permanent Settlement. Such decrees place the zemindar in no better position than other landlords who, previously to the passing of Act X of 1859, had a good right to enhance, but whose right, not having been exercised from the time of the Permanent Settlement, has been taken away by the 15th section of that Act. **HURBOATH ROY v. GOBIND CHUNDER DUTT** **15 B. L. R., 130**

[**23 W. R., 352; 1 L. R., 2 I. A., 193**

Affirming the High Court decision in **HURBOATH ROY v. GOBIND CHUNDER DUTT**

[**5 W. R., Act X, 11**

S. C. on review **6 W. R., Act X, 2**

73. ——— Unregistered tenure.—A dependent talookdar under section 51 of Regulation VIII of 1793 is not debarred from claiming the benefit of that section because his tenure had not been registered by the zemindar under section 48 of that law. The onus of proving that a dependent talookdar under section 51 of the Regulation is liable to enhancement under the provisions of that section must fall on the zemindar. **DOYAMOYEE CHOWDHRAI v. NUNDOCOOMAR DUTT** **2 Hay, 230**

74. ——— Persons not personal cultivators.—In a suit for arrears of rent at an enhanced rate against tenants who held a "kaimi jote jumma," held that the fact that they did not personally cultivate land, but held a jumma with ryots under them, could never place them in the position of dependent talookdars, and even if it could, Regulation VIII of 1793, section 51, could not apply to them, unless they could show that their tenure existed, and was capable of being registered, at the date of the decennial settlement. **ESHAN CHUNDER BANERJEE v. HURISH CHUNDER SHAHA** **24 W. R., 146**

75. ——— Person with lease terminable yearly or at will of zemindar.—Section 51, Regulation VIII of 1793, refers solely to dependent talookdars, and cannot be applied so as to protect from enhancement a person whose tenure is terminable at the end of any year, or at the pleasure or caprice of his zemindar. **KALMEHDHUN BANERJEE v. ROMESH CHUNDER DUTT** **3 W. R., 172**

76. ——— Nature of tenure.—In a suit for enhancement of rent under Regulation VIII of 1793 the nature of the tenure is a material question, irrespectively of the question whether the rent is fixed or variable, the nature and extent of the proof which the plaintiff (zemindar) is bound to

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued****(d) DEPENDENT TALOOKDARS—continued.****Beng. Reg. VIII of 1793, s. 51—continued.**

give being different according as the tenure falls within section 49 or section 51 of the Regulation. The rulings of the High Court holding that in order to bring a talook within section 51 of the Regulation it is sufficient to show that it existed and was capable of being registered in the zemindari sherishtas at the time of the decennial settlement, approved of. **BAMA SOONDUR DASSER v. RADHIKA CHOWDHRAIN** [13 W. R., P. C., 11

S. C. RADHIKA CHOWDHRAIN v. BAMA SUNDARI DASI . . . 4 B. L. R., P. C., 8

[13 Moore's L. A., 248

77. ——— Exemption from enhancement.—Suit for enhancement (under the old law) of rent of a talook held to be a dependent talook within the meaning of section 51, Regulation VIII of 1793, although not duly registered by the zemindar. *Held* that the defendant having made out a strong *prima facie* case to prove that he and those through whom he claimed had held the talook at a fixed rent from a date more than twelve years prior to the decennial settlement, and the zemindar having relied on the weakness of the defence, and having failed to show that the rent had varied, the tenure was exempt from re-assessment. **MOHAMOYA DASSER v. DOYAMOY CHOWDHRAIN** . . . 7 W. R., 62

78. ——— Accretion to zimma tenure with fixed rent.—Where a permanent zimma tenure has been held at one rate of rent for more than twenty years, the terms of section 15, Act X of 1859, as well as the provisions of section 51, Regulation VIII of 1793, preclude the zemindar from assessing accretions to the parent talook. **JUGGUT CHUNDER DUTT v. PANIOTY** . . . 8 W. R., 427

79. ——— Ryoti kadimi tenure.—Where a zemindar, a purchaser from a mortgagee, sued to enhance the rent of lands (part of the purchased zemindari) held on a ryoti kadimi tenure, which had existed more than twelve years before the decennial settlement, but the holder of which had subsequently accepted a pottah from the zemindar, *Held*, the acceptance of such pottah did not debar the tenant from the right of exemption from enhancement to which he was entitled by reason of the nature of his tenure. Such a pottah may be confirmatory only, and is not inconsistent with the presumption that a prior title existed. *Semble*,—A claim to exempt a tenure from enhancement, on the ground that it is a ryoti kadimi tenure, does not fall within Regulation VIII of 1793, section 51. **RAM CHUNDER DUTT v. JOGESH CHUNDER DUTT** [12 B. L. R., P. C., 229: 19 W. R., 353

80. ——— Notice of enhancement.—Section 51, Regulation VIII of 1793 (looked at with sections 13 and 15, Act X of 1859), does not require any notice in the case of a dependent talookdar, preliminary to a claim for enhancement of rent; but in order to succeed in a suit under that section

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(d) DEPENDENT TALOOKDARS—continued.****Beng. Reg. VIII of 1793, s. 51—continued.**

plaintiff must show that he is about to enhance on one of the three grounds therein mentioned. **TARINEN KANT LAHOOREN v. KOONJ BEHAREN AWUSTEE** [12 W. R., 112

81. ——— Grounds of enhancement.—The grounds of enhancement stated in section 51 of Regulation VIII of 1793, and not those in section 17 of Act X of 1859, are applicable to dependent talookdars. **HUBONATH ROY v. BINDOO BASHINER DRELA** . . . 3 W. R., Act X, 28

82. ——— Act X of 1859, ss. 13, 17.—In a suit for enhancement on one of the grounds set forth in section 17, Act X of 1859, the notice under section 13 can be served on a ryot with rights of occupancy; but in a case of a dependent talookdar the plaintiff must proceed under section 51, Regulation VIII of 1793, and not on the grounds laid down in section 17, Act X of 1859. The defendant's talook in this case being a shikmi one, the suit under section 17 was informal, and was accordingly dismissed. **BRUJO SOONDUR MITTER MOZOOMDAR v. KALNE KISHORE CHOWDHREY** [8 W. R., 496

83. ——— Act X of 1859, s. 15.—A dependent talookdar's rent is not liable to enhancement, unless it can be shown to have changed since the Perpetual Settlement, and he must be proceeded against under section 15 (not 17) of Act X of 1859. **NUBOKISHORE BOSE v. PANDUL SIBOAN** [8 W. R., 312

84. ——— Rate of enhanced rent.—Right to reasonable profit.—A talookdar's rent cannot be enhanced to the same rate as that paid by cultivating ryots; the talookdar is entitled to some reasonable profits. **HUBOSOONDUR CHOWDHRAIN v. ANUND MOHUN GHOSH CHOWDHREY** [7 W. R., 459

85. ——— Neighbouring lands of same kind.—A talookdar is liable to enhancement only to the extent of what other similar talookdars in the neighbourhood pay for similar under-tenures with similar lands. **MOHIMA CHUNDRA DEY v. GOOROO DASS SHIN** . . . 7 W. R., 285

86. ——— Procedure.—Beng. Reg. VIII of 1793, s. 5.—Points out the procedure to be adopted by a Court in a suit for enhancement of rent, when the defendant pleads that he is a shamilat talookdar,—that is to say, a talookdar protected under the provisions of section 5, Regulation VIII of 1793. **SHARODA PROSUNNO MOOKERJEE v. BIPSEN BEHAREN BOSE** . . . 13 W. R., 71

87. ——— Beng. Reg. VIII of 1793, s. 51.—Failure of defendant to prove presumptive protection from enhancement.—In a suit for arrears of rent of a talook at an enhanced rate, where it was shown that the defendant was not en

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(d) DEPENDENT TALOOKDARS—continued.****Procedure—continued.**

titled to set up as against any case for enhancement made out by the plaintiff, that he was protected by proof or presumption of holding from the permanent settlement.—*Held* that that did not relieve the plaintiff from the necessity of proving a case under Regulation VIII of 1798, section 51, under which alone he could maintain his suit. **SUSTEN CHURN DEY v. ISHAN CHUNDER** **22 W. R., 383**

(e) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT.

88. —Maurasi lease.—A maurasi (perpetual) tenure does not necessarily carry with it fixity of rent; it is matter of evidence whether it does or not, therefore, the rent of such a tenure may be liable to enhancement. **ANANDLAL DASS v. MUSHUM ALI** **2 B. L. R., A. C., 98, note**

89. —Rent not fixed as invariable.—A maurasi pottah, in which the rent is not fixed as invariable, does not protect the ryot from enhancement. **TARUCK CHUNDER NUNDEE v. MODHOSOODUN NUNDEE** **5 W. R., Act X, 80**

90. —Tikka mohito.—The words "tikka mohito" cannot be construed as conferring a permanent or maurasi lease at a fixed rate. **NUFFER CHUNDER SHAHA v. GOSSAIN JOY SINGH BHARATTEE** **3 W. R., Act X, 144**

91. —Mokurrari tenure.—*Suit for kabuliat.*—Rate paid for similar lands.—In a suit for a kabuliat at an enhanced rate under a pottah, the terms of which were that the lessee should hold the lands for four years rent-free; that after measurement, the lands were to be assessed; that then he was to pay four annas a bigha in the year 1265, six annas in 1266, and eight annas and three gandas in 1267 and for five years after.—*Held*, this did not constitute a mokurrari holding at a fixed rate. The case was remanded to ascertain what were the rates of similar lands in the neighbourhood in 1274, and decree to be made accordingly. **KASIMUDDI KHAND-KAR v. NADIR ALI TARAFDAR** **[2 B. L. R., A. C., 265: 11 W. R., 164]**

92. —Expressions importing hereditary character of tenure.—The objection that the documents relied on by the defendant in support of their mokurrari title contained no expressions importing the hereditary character of the alleged tenures, was held to be one not open to the plaintiff in a suit for enhancement, where the pleadings admitted the existence of the tenure and the lawful occupation of the defendant, and the only question was whether the tenures were held at a variable, or at a fixed and invariable rent. Even if the objection were open to the plaintiff, it was held that it could not prevail against the evidence which the record afforded that for upwards of a century the talooks in question had been treated as hereditary, and as such had descended from father to son, and

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(e) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—continued.****Mokurrari tenure—continued.**

been the subject of purchase. **GEFAL LALL TAGORE v. TILLUCK CHUNDER RAI** **[8 W. R., P. C., 1: 10 Moore's L. A., 183]**

93. —Pura dastoor.—Where it was stipulated in the pottah that the land should be held rent-free for five years, from 1250 to 1254; that, for 1255, a rate of five annas a bigha should be paid; for 1256, ten annas a bigha; and that from 1257 the rate to be paid every year should be the "pura dastoor," or full customary rate of fourteen annas,—it was held not to constitute a holding at a fixed rent. **BHARAT CHANDRA AITON v. GAUR MANI DASI** **[2 B. L. R., A. C., 263, note: 11 W. R., 31]**

94. —Rent fixed after stated time.—*Act X of 1859, ss. 13 and 17.*—The defendant, as middleman, took a clearing lease of certain land, which it was agreed in the kabuliat he should hold during 1260 without any rent; "for 1261, at the rate of R1 per kani; for 1262, at R2 per kani; for 1263, at R3 per kani; and in 1264, at the full customary rate of R5 per kani." The tenure was admittedly a permanent one. In a suit for arrears of rent for 1272, after notice of enhancement under section 13, Act X of 1859,—*Held* that the intention was that, after 1264, the rent should be fixed, and it was therefore not liable to enhancement. **SOORASOONDREY DABEE v. GOLAM ALLY** **[15 B. L. R., P. C., 125, note: 19 W. R., 142]**

95. —Lease not finally fixing rent.—*Failure to specify duration.*—An amulnamah, by which the defendant, for clearing and cultivating chur lands, was to pay no rent for the first three years, and then a low rate of rent gradually rising till it reached a certain rate, no period being fixed for the duration of such last-mentioned rate, was held to be no bar to the plaintiff's right of enhancement. **PUDDO MONNE DOSSIA v. PURAMANUND SEIN** **[7 W. R., 158]**

96. —Lease of land uncleared.—*Land let for purpose of clearing at low rent afterwards to be higher.*—When land is let for the purpose of clearing jungle, or other reclamation, and on this ground, or any other ground mentioned in the lease, a reduced rent is provided for the first few years, and it is said that the rent is to be at a certain rate as the full rent, such rent is not liable to enhancement. **HURO PRASAD ROY CHOWDERY v. CHUNDER CHURN BOYRAGEN** **[1 L. R., 9 Cal., 505: 12 C. L. R., 251]**

97. —Act I of 1845, s. 26, cl. 4.—Jungle land.—The words "such land continuing to be used for the purposes specified in the leases" in clause 4, section 26, Act I of 1845, do not restrain the effect of a lease for clearing land of jungle solely to such time as jungle remains to

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(e) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—continued.****Lease of land uncleared—continued.**

be cut on the land, but should be taken to mean that the lease will stand good as long as the land is kept clear of jungle, and not allowed to fall back into its old state. If a pottah gives the tenant power to extend his lease beyond the land originally made over to him under the pottah, and gives the same rent for the additional land as for the other land, such additional land is not assessable with the pergunnah rate of rent, but the pottah is good and binding even on an auction-purchaser as respects the whole of the land cultivated by the tenant. *WATSON & Co. v. JHUKROO SINGH* . 1 W. R., 195

98. ——— Lease containing no term for expiry.—Improvement of land.—Agency of ryot.—Improvement by other means.—When a pottah contains no term, and does not provide against enhancement, and the tenant has not occupied for twelve years, if it is shown that the tenant has improved the land he will be entitled to a proportionate reduction in determining the rent he should pay. But if it is also shown that the value of land generally in the neighbourhood has increased irrespectively of the agency of the ryot, the landlord will be entitled to enhancement proportionate to that improvement. *MATHURA MOHUN SAHA v. GYARAM HALDAR*

[W. R., 1864, Act X, 128

99. ——— Transferee of lease.—Construction of lease.—Liability to enhancement.—A lease contained the following words: "You shall continue to pay the sum of sicca B5 fixed on the whole as ticca jumma of the said mouzah every year, and having cleared the villages of jungle, and having brought the lands under cultivation, yourself and through others, as usual, enjoy and occupy the same with your sons and grandsons in succession." Held that the lease conveyed an absolute interest, and that the grantee and his heirs were entitled to transfer it; and that a transferee, not an auction-purchaser, was not liable to enhancement of rent. *WATSON & Co. v. JOGGESHAR ATTAR*

[Marsh., 330: 2 Hay, 436

100. ——— Lease stipulating against enhancement.—"Year by year."—The stipulation in a pottah, "after this in no manner shall enhancement be demanded," precludes enhancement during the existence of the pottah, notwithstanding in a preceding part of the pottah the words "year by year" are used (*BAXLEY, J., dissentiente*). *PUNOHANUN BOSE v. PRARY MOHUN DEB* . 2 W. R., 225

101. ——— Solehnamah stipulating against enhancement.—Construction of solehnamah.—A member of a Hindu family, who had the management of the ancestral property, was sued by one of the tenants for illegal distraint. Plaintiff put in a pottah in which the rent was described as a fixed rent, and the tenancy an old and existing tenancy. The result of that suit was a solehnamah, or compromise between the parties, in which the manager fixed

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(e) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—continued.****Solehnamah stipulating against enhancement—continued.**

or confirmed the rent of the tenure, and agreed that the rent should not be enhanced. Held that the effect of the solehnamah was to confer upon the tenant and his descendants a maurasi mokurrari right in the land at a fixed rent, as far as the manager was capable of conferring such a right. *BHOONMOHINEE DOSSEN v. DEONAYN KARIGUR*

[15 W. R., 434

102. ——— Decree allowing enhancement.—Subsequent transfer of estate.—A childless Hindu widow granted a pottah to defendant. On her death there was a dispute as to the heirship to her husband, and the right of plaintiff's vendor having been declared, the latter brought a suit against defendant for a kabuliat at enhanced rates of rent. Defendant disputed the claim, setting up the title of the opposite party, but the suit was decreed to the extent of the rate of rent admitted by defendant. Subsequently plaintiff issued a notice of enhancement, and defendant not coming to terms, sued to set aside the pottah and obtain possession. Held that the decree obtained by plaintiff's vendor created a new contract between the parties under the kabuliat, by which defendant was entitled to hold at the rent admitted by him till plaintiff took further steps: and that plaintiff's vendor having conveyed his whole title to plaintiff, who then gave defendant distinct notice, plaintiff was entitled to succeed in the present suit. *JUGGESSUR BUTTOBYAL v. ROODRO NARAIN ROY*, 12 W. R., 299, distinguished. *NUBO KISHEN MOOKERJEE v. KALACHAND MOOKERJEE*

[15 W. R., 438

See *JUGGESSUR BUTTOBYAL v. ROODRO NARAIN ROY* 12 W. R., 299

103. ——— Agreement to pay increased rent.—Acquiescence.—One of the holders of an under-tenure having agreed with his immediate landlord that an enhanced rent should be paid in respect of the tenure, the enhanced rent fixed was paid for some years, when default being made, the landlord brought a suit against all the joint-holders for arrears of rent at the enhanced rate. Held that the landlord was entitled to rent at the rate claimed, until circumstances were shown from which it would follow that the rate claimed was not the fair and equitable rate payable. Held, further, that the holder by whom the agreement to pay the enhanced rent was made, was not solely liable to pay that rent, but that the tenure was liable, and that if it could be shown that the other holders had acquiesced in the agreement they were likewise responsible. *BURHUNUDDI HOWLADAR v. MOHUN CHUNDER GUHA*, 8 C. L. R., 508, distinguished. *BURHUNUDDI HOWLADAR v. MOHUN CHUNDER GUHA* 8 C. L. R., 511

104. ——— Decree in accordance with defendant's admission.—Beng. Act VII of 1869, s. 14.—Suit for arrears of rent.—Rate of rent

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(c) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—continued.****Decree in accordance with defendant's admission—continued.**

payable.—The plaintiff sued for arrears of rent for the year 1282 at the rate of R2-8 per bigha. The defendant alleged that the rent was only fifteen annas per bigha. The Judge found that the plaintiff had not proved that the rate of rent was R2-8 per bigha, and, without finding that the proper rate was fifteen annas, gave the plaintiff a decree for that amount. The plaintiff brought a subsequent suit for arrears of rent for the year 1283, when it was held by the Court of first instance and by the lower Appellate Court that he could only recover arrears of rent at the rate of fifteen annas, that being the rate of "rent payable for the previous year" within the meaning of section 14, Bengal Act VIII of 1869. *Held* that the decisions were wrong, and must be reversed. **PURNOO SINGH v. NIBGHIN SINGH**

[I. L. R., 7 Cal., 298; 8 C. L. R., 310]

105. — *Stipulation in kabuliati for increase in rent.*—*Rent for land in excess of quantity held under kabuliati.*—*Suit to recover rent as agreed.*—*Notice of enhancement.*—*Beng. Act VIII of 1869, s. 14.*—Where a kabuliati contains an agreement to pay a certain specified rent for a certain specified area, although no rate per bigha was fixed, and also an agreement to pay further rent at the rate specified for lands found on measurement to be held in excess of the lands of which the jumma was fixed, a landlord is entitled to recover such increased rent without serving any notice on the tenant under section 14 of Bengal Act VIII of 1869, and it is a reasonable presumption to make that the rate per bigha was the average rate of rent payable in respect of the lands for which the total amount of rent payable was fixed. *Nistarini Dassi v. Bonomali Chatterjee, I. L. R., 4 Cal., 941, followed.* **LAIDLEY v. BISHU-CHARAN PAL** . . . I. L. R., 11 Cal., 553

106. — *Agreement to take rent as long as holdings continue.*—*Right to enhance.*—*Exemption from enhancement.*—Where the relative rights of the parties as landlord and tenants were determined by competent authority, and the matter referred for decision of the Collector was the commutation of the rents paid in kind into money rents, and that officer in so doing decided the rights of the parties declaring the tenants sub-proprietors and directing them to pay at the revenue rates with an addition of 5 per cent. allowance to the landlord,—*Held* that the lumberdar, notwithstanding his failure to set aside the order, and his receipt of the amount so fixed, was not precluded from enhancing the rent on any of the grounds specified in section 17, Act X of 1859. Where a *wajib-ul-urz* stated that "the hereditary tenants in the village pay their rents like the proprietors, and so long as they shall continue to pay their rents they and their heirs shall continue to cultivate their holdings,"—*Held* that, on the terms of the *wajib-ul-urz*, the defendants could not claim exemption from enhancement. **BUNSER v. RAM-SOOKH** . . . 3 Agra, 384

II

ENHANCEMENT OF RENT—continued.**2. LIABILITY TO ENHANCEMENT—continued.****(c) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—continued.**

107. — *Provision in administration paper protecting from enhancement.*—A specific provision in the administration papers protecting the ryot from enhancement of rent during the term of the settlement will be enforced. **JHUMMUN SHAH v. DEBER DASS**

[1 N. W., 8; Ed. 1873, 7]

108. — *Conditions with respect to enhancement of rent in a *wajib-ul-urz* are generally intended to have effect only during the period of the settlement being made at the date of such *wajib-ul-urz*.* **BAIOHOO RAM v. DOWLAT RAM**

[2 N. W., 8]

109. — *Agreement to pay enhanced rates.*—*Tenant-at-will.*—*N. W. P. Rent Act (XVIII of 1873), s. 21.*—The *patwari* of a village entered in his diary that a *tenant-at-will* had agreed with the landholder to pay enhanced rent, but the agreement was not recorded, the terms as to rent were not stated, and there was nothing to show that such tenant had assented to such entry. *Held* that there was no record of such agreement, within the meaning of section 21 of Act XVIII of 1873. **BHAWANI v. ABDULLA KHAN** . I. L. R., 3 All., 365

110. — *Agreement not to enhance, Duration of.*—*Liability to enhancement.*—On the 27th June 1866 it was agreed between B., a *zemindar*, and D., a *ryot*, that the latter should pay R20 annually as the rent of his holding, and that for the future no further sum in excess should be demanded, or suit brought for enhancement of rent. The settlement of the district where the land in respect of which the agreement was made was situate, expired on 1st July 1870. B. having subsequently enhanced D.'s rent to R40, D. brought a suit to contest his liability to pay enhanced rent, basing his suit on the agreement of 27th June 1866. The lower Courts held that B. was not bound by the agreement after the expiry of the settlement in force at the time of the agreement, and directed D. to pay an enhanced rate of rent. In special appeal D.'s claim was decreed. **DROJRET v. BRUGWANT** . . . 6 N. W., 373

111. — *Assessment of, and decree for, rent at enhanced rate.*—*Kabuliati, Effect of subsequent execution of.*—On the 25th of January 1864, the plaintiffs obtained a decree against the defendants for assessment of enhanced rent. Shortly afterwards, the defendants executed a *kabuliati*, at a reduced rate, for eleven years ending the 31st Assin 1282 (16th October 1875). After the term had expired, the plaintiffs sought to recover rent from the defendants at the rate settled by the decree of 1864. *Held* that the decree had been superseded by the subsequent arrangement, and that the plaintiffs could not recover rent at an enhanced rate, except under the provisions of Bengal Act VIII of 1869. **NOBIN CHUNDER SIBGAR v. GOUB CHUNDER SHAHA**

[I. L. R., 6 Cal., 759; 8 C. L. R., 161]

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ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION.****(a) GENERALLY.**

112. ——— Tenant accepting pottah after long holding.—Presumption.—Act X of 1859, s. 4.—If a tenant has held land at a uniform rate for generations, and the pottah given to him subsequently does not fix a rent different from that previously paid, but merely asserts the rent he is to pay during the term of the pottah, he is entitled to the benefit of the presumption contained in section 4, Act X of 1859, if it be found that his rent has not been changed for twenty years. *Nowlas Koonwer v. Shiva Suhai*. 1 Agra, Rev., 65

113. ——— Pottah not inconsistent with holding.—In a suit for enhancement, if the defendant plead pottahs which are not inconsistent with the presumption under section 4, Act X of 1859, and proves twenty years' uniform payment of rent, the presumption will arise unless the opposite party prove a variance in the pottahs. *Korooma Moyee Dossee v. Shib Chunder Deb*

[6 W. R., Act X, 50

114. ——— Pottah subsequent to permanent settlement.—Pottah not inconsistent with holding.—When a ryot, in an enhancement suit, proves uniform payment of rent for twenty years previous to the suit, the production of a pottah dated more than twenty years before the suit, but subsequent to the permanent settlement, if not inconsistent with the inference that it is a continuation of a former state of things, will not interfere with or defeat the presumption of uniform payment from the permanent settlement. *Kishen Mohun Ghose v. Eshan Chunder Mitter* . . . 4 W. R., Act X, 36

115. ——— Failure to prove pottah.—Act X of 1859, ss. 3, 4.—Presumption.—In a suit for enhancement of rent, a ryot is not to be precluded from the benefit of the presumption under section 4 of Act X of 1859, on proof of having held at a fixed rent for a period of twenty years merely because he has failed to prove a pottah which he has set up not inconsistent with that presumption. *Girish Chundra Bose v. Kali Krishna Haldar*

[B. L. R., Sup. Vol., 538: 6 W. R., Act X, 57

Prabhu Mohun Mookerjee v. Koylas Chunder Byrager 23 W. R., 53

116. ——— Existence of kabuliati with-in 20 years.—Beng. Rent Act VIII of 1869, s. 4.—The presumption arising in favour of a tenant from a twenty years' occupation, when it is supported by evidence, is not necessarily displaced by the discovery of a kabuliati bearing a subsequent date. Such a kabuliati is as consistent with the confirmation of a pre-existing rent as with the settlement of a new rate, and it is for the Court to balance the inferences drawn from the kabuliati against those arising from the twenty years' holding. *Soorjomonee Dossee v. Prabhu Mohun Mookerjee*

[25 W. R., 331

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(a) GENERALLY—continued.**

117. ——— Setting up pottah.—Presumption of exemption from enhancement.—A defendant who rested his defence in a suit for enhancement upon a pottah, which he set up as entitling him to hold free from enhancement under section 4, Act X of 1859, cannot plead that the tenure is protected from enhancement by reason of payment of rent at a uniform rate for twenty years. *Jauu Ali v. Jan Ali* 9 W. R., 149

Watson & Co. v. Sham Lall Pundah

[10 W. R., 73

Watson & Co. v. Anjuna Dossee

[10 W. R., 107

118. ——— Possession of ancient pottah.—Act X of 1859, s. 4.—The discovery among title-deeds of an ancient pottah dated 1167, of the genuineness of which the ryot could have no means of judging, is no bar to prevent him from claiming the benefit of the presumption under section 4, Act X of 1859. *Huronath Roy v. Kumola Kant Chuckerbutty* . . . 5 W. R., Act X, 56

119. ——— Existence of pottah and amulnamah.—Presumption of change in rent.—In a suit for enhancement where the defendants plead a holding at a uniform rate from the Permanent Settlement, the mere existence of a pottah and amulnamah of 1215 is not conclusive evidence that the rate was then changed, or was then first fixed. *Luchmee Narain Shaha alias Gopernath Shaha v. Koochil Kant Roy* 6 W. R., Act X, 46

120. ——— Pottah not shown to be confirmatory of previous holding.—Commencement of possession.—In the absence of documentary evidence to show that a pottah of 1239 was merely confirmatory of a previous holding, the possession of a ryot claiming under that pottah will commence from the date of his pottah, and he is not entitled to the benefit of the presumption under section 4, Act X of 1859. *Jainooddeen v. Puono Chunder Roy* 8 W. R., 129

121. ——— Pottah subsequent to Permanent Settlement.—A tenant is not entitled to the presumption, under section 4 of Act X of 1859, of having held his tenure at a uniform jumma from the Permanent Settlement, when it appears from his pleadings that his holding first began under a pottah at a period subsequent to the Permanent Settlement, and he does not allege that he held the land previous to his obtaining the pottah. *Kunda Misser v. Ganesh Singh*

[6 B. L. R., Ap., 120: 15 W. R., 193

Luchmee Prasad v. Ramgolam Singh

[2 W. R., Act X, 30

122. ——— Act X of 1859, s. 4.—Rebutting presumption.—The presumption of

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(a) GENERALLY—continued.****Pottah subsequent to Permanent Settlement—continued.**

occupancy from the Permanent Settlement created by section 4, Act X of 1859, is rebutted by the ryot relying upon a pottah granted after the Permanent Settlement. *MUNMOHUN SINGH v. WATSON & Co.*

[W. R., F. B., 22: 1 Ind. Jur., O. S., 8, 78

S. C. WATSON & Co. v. CHOTO JOORA MUNDUL
[Marsh, 68: 1 Hay, 232

RAM LALL GHOSE v. LALLA PECUMLALL DOSS
[Marsh, 408: 2 Hay, 526

RAMKISHEN SIRCAR v. DELER ALI
[W. R., 1864, Act X, 36

BHEE KISHORE LALL v. KUNBOOLY LALL
[W. R., 1864, Act X, 109

123. ——— **Reliance on and failure to prove mokurrari tenure.—Act X of 1859, s. 4.—Presumption.**—The fact of a ryot having relied upon a mokurrari tenure cannot prevent his falling back on the presumption arising under section 4 of Act X of 1859. *CHAMARNEE BIBEK v. AYENOOLLAH SIRDAR* 9 W. R., 451

124. ——— **Presumption.**—In a suit for arrears of rent at an enhanced rate, where defendants pleaded protection under a mokurrari pottah of old date, which had been lost long ago, and also pleaded the presumption arising from uniform payment for more than twenty years,—*Held* that the defendants' inability to adduce sufficient proof of that pottah was no reason why they should not be allowed an opportunity to prove the uniform payment pleaded. *NILMONNY SINGH DEO v. ANUNT RAM PUTNAIK* 15 W. R., 393

125. ——— **Setting up forged pottah.—Presumption.**—Presumption of occupancy from the Permanent Settlement cannot be pleaded after a pottah brought forward to strengthen the presumption is found to be fabricated. *FORBES v. NUND COOMAR MUNDUL* 2 W. R., Act X, 35

126. ——— **Act X of 1859, s. 4.—Presumption.—Quere.**—Whether a party who has propounded a forged pottah could have the benefit of the presumption arising from paying a fixed rent for twenty years. *GOPAL CHUNDER ROY v. GOOROO DASS ROY*

[B. L. R., Sup. Vol., 764, note: 7 W. R., 135

127. ——— **Forged deed.—Dishonest defence.**—In a suit for enhancement of rent, the ryot, defendant, set up a mokurrari pottah, which was found to be forged. *Held* that the fact of the ryot having relied on a pottah which was found to be forged did not entitle the landlord to a decree for enhancement of rent to the amount claimed. *ISWAR CHANDRA DAS v. NITTIANAND DAS* [B. L. R., Sup. Vol., 490: 6 W. R., Act X, 70

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT.**

128. ——— **Sale for arrears of rent.—Auction-purchaser, Right of.—Presumption.**—When an auction-purchaser at a sale for arrears of revenue demands an enhancement, the presumption arising from a uniform payment holds good, and the tenant's protection is not swept away by the sale. *SHUDEK SIRCAR v. MOHAMOYA DABEE* . 1 Ind. Jur., N. S., 77

S. C. SADUCK SIRCAR v. MOHAMOYA DEBIA
[5 W. R., Act X, 16

129. ——— **Act X of 1859, s. 4.—Presumption.—Auction-purchaser at sale prior to passing of Rent Act, Right of.**—The plaintiff was the auction-purchaser at a sale of land made prior to the passing of Act X of 1859. In 1253 he dispossessed a tenant who had been in occupation of the land for twenty-seven years at a uniform rent. In 1260, the tenant was restored to the land under a decree, finding that he held a mokurrari tenure. Afterwards, and before the plaintiff had received any rent, he brought a suit against the tenant for enhancement of rent. *Held* that the enactment in section 4 of Act X of 1859 that, when it shall be proved that the rent at which land has been held by a ryot in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, did not apply to deprive the plaintiff of the right to enhance, since there had not been a holding for twenty years before the commencement of the suit within the meaning of the section; and the plaintiff under the law in force before the passing of Act X of 1859 was as an auction-purchaser not bound by the rent, unless the mokurrari tenure was created twelve years before the date of the Permanent Settlement. *LUTEEFOONISSA BEEBEE v. POOLIN BEHARY SEN*

[1 Ind. Jur., O. S., 10: W. R., F. B., 31

Upheld on review W. R., F. B., 91

POOLIN BEHARY SEN v. LUTEEFOONISSA BIBEK
[Marsh., 107: 1 Hay, 242

130. ——— **Sale for arrears of revenue.—Purchaser, Right of.—Act I of 1845, s. 26.—Act X of 1859, ss. 1, 3, 4.**—Ryots who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement, are not liable to have their rents enhanced even at the suit of a purchaser at a sale for arrears of revenue under Act I of 1845. *HURBYTHUR MOOKHEJEE v. MOHESH CHUNDER BANERJEE*

[B. L. R., Sup. Vol., 623: 7 W. R., 176

131. ——— **Purchaser, Right of.—Act XI of 1859, s. 37.—Beng. Act VIII of 1869, ss. 4 and 17.—Presumption.**—The procedure prescribed in Bengal Act VIII of 1869 applies to claims of enhancement under section 37 of Act XI of 1859 by a purchaser at a revenue-sale, and the rights

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.****Sale for arrears of revenue—continued.**

of any such purchaser are, therefore, subject to all the modifications contained in sections 4 and 17, which form a presumption in favour of tenures of all classes held at an unchanged rent for a period of twenty years before the commencement of a suit, that such holdings have run on at the same rate from the time of the Permanent Settlement. **PURNANUND ASBUN v. ROOKINEE GOOPTANI**

[I. L. R., 4 Calc., 793]

132. — Invalid lakhiraj resumed after Permanent Settlement.—*Beng. Act VIII of 1869, ss. 3 and 4.*—Sections 3 and 4, Bengal Act VIII of 1869, apply to invalid lakhiraj grants resumed at a time subsequent to the Permanent Settlement. **BANER MADHUB BANERJEE v. BHAGUT PAL**

[20 W. R., 486]

133. — Evidence of uniform payment of rent.—What is sufficient evidence to warrant a presumption that a tenure has been held at a uniform rate for twenty years will depend upon the circumstances of each case. **PEARSEE MOHUN MOOKERJEE v. ANNUND MOYEE DEBIA**

[9 W. R., 158]

134. — Issue as to change in rent.—*Act X of 1859, s. 15.*—*Presumption.*—In determining whether a party is entitled to the benefit of the presumption under section 15, Act X of 1859, or not, the question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed within twenty years prior to the institution of the suit. **AHMED ALI v. GOLAM GAFAR**

[3 B. L. R., Ap., 40: 11 W. R., 432]

135. — Continuous and uniform payment.—*Presumption.*—*Beng. Act VIII of 1869, ss. 3, 4.*—Section 4, Bengal Act VIII of 1869, entitles the holder of land for the time being, however he may have acquired it, to the benefit of the presumption prescribed in that section if he can show that there has been a continuous and uniform payment of the same rent for twenty years. **TIRTHANUND THAKOOR v. HERDU JHA**

[I. L. R., 9 Calc., 252]

136. — Calculation of period of twenty years.—*Act X of 1859, s. 4.*—*Exclusion of time in calculating period.*—In calculating the period of twenty years mentioned in section 4, Act X of 1859, there is nothing in the section to warrant the exclusion of the period during which the estate was under farm. **GOORBIN BHAGAT v. FUREED ALUM**

[3 Agra, 401]

137. — Saleable tenures.—*Act X of 1859, s. 4.*—*Possession of vendor.*—In cases of saleable tenures the period of possession by the ryot's vendor is included in the twenty years mentioned in section 4, Act X of 1859. **KHODA NEWAZ v. NUBO KISHORE RAY**

[5 W. R., Act X, 53]

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.**

138. — Limitation of presumption.—*Act X of 1859, s. 4.*—*Suit not under Rent Act.*—The presumption arising under section 4, Act X of 1859, was not necessarily restricted to proceedings under that Act; but even if it did not apply to suits other than those under Act X a Court would not do wrong to follow the rule laid down in section 4 in determining for what length of time payment of a fixed rent should be made in order to warrant the presumption of its having been made since the Permanent Settlement. **DUKHINA MOHUN ROY v. KURREEMOOLLAH**

[12 W. R., 243]

139. — Limitation of presumption.—*Suit not under Rent Act.*—*Act X of 1859, s. 4 and Beng. Act VIII of 1869, s. 4.*—*Suit in Civil Court for declaratory decree.*—A zemindar having sued a ryot for rent the defendant pleaded to a lower rate of rent than that claimed, and set up a mokurrari tenure. The suit was decreed and an appeal therefrom was dismissed. The ryot then brought an action in the Civil Court to have it declared that he had a mokurrari tenure. The suit was dismissed by the first Court, but the lower Appellate Court reversed the decision, relying mainly upon a presumption under section 4 of the Rent Law. *Held* that the lower Appellate Court was wrong in raising the presumption of uniform payment, section 4 only applying to suits under the Rent Acts. **ISHAN CHUNDER ROY CHOWDHRY v. BHRUB CHUNDER DOSS**

[21 W. R., 25]

140. — Necessity of pleading holding at uniform rate.—*Act X of 1859, s. 4.*—*Presumption.*—The presumption under section 4, Act X of 1859, of holding at a uniform rate from the Permanent Settlement need not be specifically pleaded, but (unless rebutted) arises as a matter of course on proof of uniform payment for twenty years. **MUNNEKURNICKA CHOWDHRAIN v. ANUND MOYEE CHOWDHRAIN**

[8 W. R., 6]

141. — Presumption.—*Act X of 1859, s. 4.*—Section 4 does not require the defendant to plead uniformity of payment from the time of the Permanent Settlement, but provides that if, on the trial of a suit, it appears that the rent has not been changed for twenty years, it shall be presumed that the land has been held at that rate from the time of the Permanent Settlement. **BHOYRUB-NATH SANDYAL v. MUTTY MUNDUL**

[W. R., 1864, Act X, 100]

MAHMOODA BEBEE v. HABEN DRUN KHULKEFA

[5 W. R., Act X, 12]

RAM COOMAR MOOKERJEE v. RAGHUB MUNDUL

[2 W. R., Act X, 2]

RAKAL DOSS TIWARRI v. KINOORAM HALDAR

[7 W. R., 242]

142. — Possession for 50 years.—*Presumption.*—*Act X of 1859, s. 4.*—Proof of uni-

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.****Possession for 50 years—continued.**

form payment of rent for twenty years by ryots pleading possession from the decennial settlement will, unless rebutted by the landlord, entitle them to the presumption under section 4, Act X of 1859, and save their holdings from enhancement. But proof of uniform payment by ryots pleading possession for fifty or sixty years will entitle them to nothing but a right of occupancy. **RAMNABAIN SINGH v. HORONATH ROY** . . . **W. R., 1864, Act X, 86**

HURENKISHEN ROY v. SHAIKH BABOO . . . **[1 W. R., 5]**

EXRAM v. BUHOORAN . . . **2 W. R., Act X, 69**

Contra, **RAMBUTNO SIBCAR v. CHUNDER MOOKHERJEE DABEA** . . . **2 W. R., Act X, 74**

143. ——— Proprietors paying rent.—Act X of 1859, s. 4.—Proprietors paying rent for the right of occupancy are not ryots in the sense contemplated by section 4, Act X of 1859. **MITTURJEET SINGH v. FITZPATRICK** . . . **11 W. R., 206**

144. ——— Inference from ancient dowl.—Beng. Reg. VIII of 1793.—Presumption of fixed rent.—The plaintiff claimed to enhance defendant's rent from Sicca B661 to Company's R7,528. No evidence was given as to the time at which the holding had commenced, or how long it had continued; but an attempt was made to prove a dowl bundobust of 1803, which would have shown that the persons through whom the defendants claimed were then in occupation of the land at the same rent, but no legal evidence of the dowl was given. *Held, per PRACOOK, C. J. (dissentiente BAYLEY, J., and KEMP, J.),* that, independently of the dowl, it might be presumed, from the great differences between the rent at which the lands were held and the present value of the lands, that the occupation at the low rent had been continued as of right, and not merely by the sufferance of the zemindar, and that such occupation at the same rent had existed twelve years before the date of Regulation VIII of 1793. *Per BAYLEY, J.,* that, independently of the dowl, the facts did not satisfy such a presumption; but that if the dowl were proved, then it might be presumed that the occupation at the same rent had commenced twelve years before the date of the Regulation. *Per KEMP, J.,* that, even if the dowl were proved, the presumption would not arise. **BRJUNGGOONA DASSEE v. DEBRANEE DASSEN** **[Marsh., 424]**

DEBRANEE DASSEN v. BRJUNGGOONA DASSEN **[W. R., F. B., 94]**

145. ——— Possession for a long time from olden date, &c.—Presumption.—Act X of 1859, s. 4.—A plea of holding "for a long time from olden date from before" is not inconsistent with a holding from the time of the decennial settlement so as to deprive the defendant of the benefit of the presumption created by section 4, Act X of 1859, which does

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.****Possession for a long time from olden date, &c.—continued.**

not require a specific plea that the tenure was held at a fixed rent at the Permanent Settlement, but only proof of payment for twenty years at a fixed rate in order to raise the legal presumption. **MUNMOHUN GHOSH v. HUSERUT SIEDAR** . . . **2 W. R., Act X, 39**

JUGMOHUN DOSS v. POORNO CHUNDER ROY **[3 W. R., Act X, 133]**

HEM CHUNDER CHATTERJEE v. POORNO CHUNDER ROY . . . **3 W. R., Act X, 162**

RAJ COOMAR ROY v. ASSA BEBEE **[3 W. R., Act X, 170]**

GOOROO DOSS MUNDUL v. DURBAREE **[5 W. R., Act X, 86]**

SHAM LAL GHOSH v. MUDDUN GOPAL GHOSH **[6 W. R., Act X, 87]**

146. ——— Possession for a long time.—Sufficiency of evidence.—When, in a suit for enhancement, a ryot or talookdar pleads possession for a long time and claims the benefit of the presumption under section 4, that is tantamount to his having named the Permanent Settlement. **DHUN SINGH ROY v. CHUNDER KANT MOOKERJEE** **[4 W. R., Act X, 43]**

147. ——— Possession from Permanent Settlement.—Sufficiency of evidence.—Possession from the Permanent Settlement is not sufficient to prove that a uniform rate of rent has been paid from that date. **MAHMOODA BEBEE v. HABEEDHUN KHULERFA** . . . **5 W. R., Act X, 12**

148. ——— Possession for long time.—Act X of 1859, s. 4.—Presumption.—*Held (by JACKSON J., whose opinion prevailed)* that where a ryot in his answer to a suit for enhancement pleads possession for a very long time, and expressly claims the benefit of the presumption under section 4, Act X of 1859, it is tantamount to his naming the Permanent Settlement; but where the defendant's allegation, whether oral or written, suggests a commencement of a holding at a much later period, and his evidence is of the same character, then the presumption claimed will not arise from the proof of twenty years' occupation at a rate unchanged. **HUREAK SINGH v. TOOLSEE RAM SAHOO** . . . **11 W. R., 84**

Affirmed in **HUREAK SINGH v. TULSI RAM SAHU** **[5 B. L. R., 47; 13 W. R., 216]**

149. ——— Possession from generation to generation.—Presumption.—Act X of 1859, s. 4.—In a suit for enhancement of rent the ryot pleaded that he had held certain lands from generation to generation at a uniform rate; that he was therefore entitled to claim the presumption arising under section 4, Act X of 1859; and that he should be allowed to date his claim from the date of

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.****Possession from generation to generation—continued.**

the Permanent Settlement. *Held* that he was entitled to such presumption on showing that he had paid rent at a uniform rate for a period of twenty years previous to the suit. **MITRAJIT SINGH v. TUNDAN SINGH** . . . **3 B. L. R., Ap. 88 [12 W. R., 14]**

150. ——— Sufficiency of proof.—Act X of 1859, s. 4.—Presumption.—In a suit for enhancement of rent, where defendant claimed the benefit of the presumption arising under section 4, Act X of 1859, it was held that his sworn declaration that the rent had not varied for more than twenty years, corroborated by the records of the Collectorate, which showed that the rent was the same as it had been more than thirty years ago, was sufficient to warrant the presumption, seeing that plaintiff had failed to show any intermediate variation. **RAJ DOOLAB v. MOHESSEE BRUTT** . . . **10 W. R., 364**

151. ——— Act X of 1859, s. 4.—Admission of plaintiff.—In a suit for enhancement of rent, plaintiff's admission that defendant had held the tenure for thirty or thirty-two years at the same rent, was held not to amount to an admission that the land had been held at that rate of rent from the Permanent Settlement, and that plaintiff should have an opportunity allowed him of rebutting any presumption which might arise from that admission. **PEAREE MOHUN DUTT v. RADHA MADHUB MOOKERJEE** . . . **10 W. R., 427**

152. ——— Act X of 1859, s. 4.—Decree for arrears of rent.—In a suit for arrears of rent at an enhanced rate, where defendant pleaded the presumption arising under section 4, Act X of 1859, and plaintiff produced in support of his claim a decree of 1860, declaring him entitled to the enhanced rent and a later decree for arrears on the same scale, *Held* that the fact that the later decree had only been executed in part, and that defendants never paid more than Rs 24 to the Government, did not neutralise the effect of the decrees as the very best evidence that the rents had varied since the decennial settlement. **WOODOY NARAIN SHIN v. TABINER CHURN ROY** . . . **11 W. R., 496**

153. ——— Act X of 1859, s. 4.—Presumption.—The presumption allowed by section 4, Act X of 1859, of holding certain orchard land at a uniform rent since the Permanent Settlement, was held not to be removed by defendant's statement that the orchard was planted more than forty years ago; and it was for plaintiffs to prove it to have been made since the Permanent Settlement. **SOODISTER LALL CHOWDHRY v. NUTHOO LALL CHOWDHRY** . . . **8 W. R., 487**

154. ——— Presumption.—Act X of 1859, s. 4.—Where a defendant who claims

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.****Sufficiency of proof—continued.**

to have held lands for more than 100 years is able to prove that the rent has not changed for twenty years, he is entitled to the presumption allowed by section 4, Act X of 1859. **LUCKMEHPUT SINGH v. JUNGULKE KULLYAN DOSS** . . . **9 W. R., 147**

155. ——— Act X of 1859, s. 4.—Presumption.—When a ryot alleges that he has paid rent at a uniform rate for forty years, and claims the benefit of the presumption under section 4, Act X of 1859, it is not necessary, in order to entitle him to a decree, that he should expressly state that rent has been paid at the same rate from the time of the Permanent Settlement. **POOLIN BEHARY SEN v. NEMAYE CHAND** . . . **7 W. R., 472**

156. ——— Beng. Act VIII of 1869, s. 4.—Presumption.—In a suit for enhanced rent after notice, where defendant pleaded that he had for more than twenty years paid at the same rate, *Held* that he was entitled to the presumption under section 4 of the Rent Law, unless plaintiff could prove that defendant's tenure commenced at some date subsequent to the decennial settlement. **ASHRUF ALI v. VILANT HOSSAIN** . . . **24 W. R., 356**

157. ——— Inference.—Beng. Act VIII of 1869, s. 4.—Presumption.—In a suit relating to four jumbas in the possession of the same persons, in which it was proved that three of the jumbas had been held at the same rent for twenty years, but that the fourth, having only been purchased eighteen years previously by the said persons, had not been longer in their own possession, *Held* that the presumption might arise that the jumbas itself had been held at an unchanged rent for twenty years, and that the lower Courts were justified in inferring that such had been the case. **RADHAMOYEE DRY CHOWDHRY v. AGHORE NATH BISWAS** . . . **25 W. R., 384**

158. ——— Beng. Act VIII of 1869, s. 4.—Presumption of uniformity.—In suits to set aside notice of enhancement, where the plaintiffs put in evidence (in two cases) a chitti of 1257 B.S., and (in a third) a decree of 1857 citing an earlier chitti showing that they had long held at existing rates, and there was no evidence to prove that the land had not been held at those uniform rates from the Permanent Settlement, or that such rent had been fixed at some later period, the plaintiffs were held entitled to the presumption prescribed by Bengal Act VIII of 1869, section 4. **RAM BHUROO SINGH v. MAHOMED ASGURER KHAN** . . . **19 W. R., 205**

159. ——— Enhancement of rent, Suit for.—Beng. Act VIII of 1869, s. 4.—Presumption of evidence.—In a suit for arrears of rent at enhanced rates, where the defendant relies on the presumption contained in section 4 of Bengal Act VIII of 1869, it is not sufficient, in order to do away

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.****Sufficiency of proof—continued.**

with that presumption, to show that the land has not been in cultivation from the time of the Permanent Settlement. It must be shown that the land has not been held since the time of the Permanent Settlement. **PRARI MOHAN MUKHERJI v. BANSHI MAJHI** [I. L. R., 11 Calo., 757]

160. — Act X of 1859,

s. 4.—Evidence to establish presumption of uniform rent.—A ryot is not bound to file dakhilas in order to establish the presumption allowed by Act X of 1859, section 4, if he can establish it by other good independent evidence. **RADHA GOBIND ROY v. SHAMA SOONDURAN DABEN** . . . 21 W. R., 408

161. — Act X of 1859,

s. 4.—Enhancement on ground of there being excess land.—The rent of a tenure protected from enhancement under the provisions of section 4, Act X of 1859, cannot be increased on the ground of the tenure containing excess land. **DE COURCY v. MEGHNATH JHA** . . . 15 W. R., 157

162. — Enhancement

on ground of there being excess land.—Act X of 1859, ss. 15 and 16.—Presumption of uniform rent.—In a suit for arrears of rent at enhanced rates, where defendant pleads the provisions of sections 15 and 16, Act X of 1859, if it is found that the tenure has been held at a uniform rent from the time of the Permanent Settlement, the plaintiff has no right to enhance the rent, even though the land in possession of defendant may be in excess of that covered by the original tenure. If, on the other hand, the excess land was not included in the original tenure, but obtained subsequently without the consent of the plaintiff, the possession of the defendant must be considered adverse, and the suit must fail for want of privity. **INDRO BHOOSUN DEB v. GOLUCK CHUNDER CHUCKERBUTTY** . . . 12 W. R., 350

163. — Act X of 1859,

s. 4.—Pleadings.—Per NORMAN and HOBHOUSE, JJ. (BAYLEY, J., dissenting).—Held that, in the present case, the defendant had not, either in the written statement filed by him or by his statements in examination, raised the question, whether he was entitled to the benefit of section 4 of Act X of 1859. **HURRAK SING v. TULSI RAM SAHU** [5 B. L. R., 47: 13 W. R., 216]

164. — Presumption.

In a suit for enhancement, before giving a defendant the benefit of the presumption created by section 4, Act X of 1859, there must be legal evidence of actual uniformity of rent, for the whole of the twenty years immediately preceding the commencement of the suit. **RAJNARAIN ROY CHOWDHRY v. ATKINS** [1 W. R., 45: 5 W. R., 30]

SHTB NARAIN GHOSH v. KASHAN PERSHAD MOOKERJEE . . . 1 W. R., 226

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.****Sufficiency of proof—continued.**

RAM KISHORE MUNDUL v. CHAND MUNDUL

[5 W. R., Act X, 64]

PREM SAHOO v. NYAMUT ALI

[6 W. R., Act X, 89]

165. — Proof requisite

of uniformity of rent.—A ryot is bound to give strict proof of a uniform payment of rent for twenty years. That is a matter which should not be decided in his favour on mere inference. **SHAM LALL GHOSH v. BOISTUB CHURN MOZOOMDAR** . . . 7 W. R., 407

BUNGO CHUNDER CHUCKERBUTTY v. RAM KANAYE BHAWAL . . . 10 W. R., 256

SREENATH BOSH v. POGILIAN MOLLAN

[17 W. R., 374]

166. — Time for which

the rent has been uniform.—Uniform payment must be shown, if not for every year in the twenty years, at least for the greater portion of that period, and for years in the earlier, as well as in the later, portion of the same. **SURNOMOYEE DASSEE v. SHAM MUNDUL** . . . 9 W. R., 270

167. — Act X of 1859,

s. 16.—Rent of talook.—Presumption.—Section 16, Act X of 1859, does not require proof of actual payment of one rate of rent for twenty years, but that the rent has remained unchanged for that period. Uniform rent for the twenty years preceding the suit ought not to be presumed upon evidence which only touches a portion of that period: on the other hand, it is not necessary to have evidence bearing directly on every one of the twenty years. It is sufficient if the whole time is included within limits upon which the evidence bears, provided the evidence leads to the belief of uniform rent. **FOSCHOLA v. HURO CHUNDER BOSH** [8 W. R., 284]

RASBIBHARY GHOSH v. RAM COOMAR GHOSH

[22 W. R., 487]

168. — Evidence of

each year's rent.—Uniform payment of rent for twenty years may be presumed without proof of such payment for every separate year. **KOMUL LOOHUN ROY v. TUMBEROODDEEN SIEDAH** . . . 7 W. R., 417

169. — Presumption.

Act X of 1859, s. 4.—Proof of uniform payment of rent up to the date of suit is not absolutely necessary to entitle a ryot to the benefit of the presumption under section 4, Act X of 1859, in a case when the landlord has refused to take rent for a few years before suit. **GYARAM DUTT v. GOOROOCHURN CHATTERJEA** . . . 2 W. R., Act X, 59

170. — Interruption in

proof of duration.—Act X of 1859, s. 4.—Presumption.—In a suit for a kabuliat at an enhanced rent,—Held by SETON-KARR, J., that, as there was a break

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(b) PROOF OF UNIFORM PAYMENT—continued.****Sufficiency of proof—continued.**

of three years in the period of uniform payment which would give rise to the presumption of uniform holding from the time of the Permanent Settlement, the Judge, instead of accepting dakhilas, merely because they were not denied by the plaintiff, should have found whether the dakhilas were satisfactorily proved and attested, and, if so, whether they could legally support a uniform payment for twenty years. **RADHA KANT DES v. KHEMA DOSSEE**

[7 W. R., 105]

(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE.

171. ——— Uniformity in rate.—Variation.—Uniformity in the amount actually paid is not required to raise the presumption under section 4, Act X of 1859, but uniformity in the rate agreed upon, either expressly or impliedly, between the parties to be paid. **MORAN & Co. v. ANUND CHAUDER MOZOOMDAR** . 6 W. R., Act X, 35

SHAM CHURN KOONDOL v. DWARKANATH KUBERAJ . . . 19 W. R., 100

172. ——— Act X of 1859, s. 4.—Rent changed in amount but at same rate.—The words of section 4, Act X of 1859, refer to the rate as well as the amount of rent. Therefore, where from 1839 to 1858 a ryot had paid rent at the same rate, but in 1858 the rent was, by order of the Civil Court, changed, and a proportionate amount remitted in consequence of a portion of the land having been lost by diluvion,—*Held* that the remaining portion of the rent being levied at the same rate as before, the ryot had not lost his right to avail himself of the provisions of section 4, Act X of 1859. **RIAZ-UNISSA v. TEKUN JHA**

[1 B. L. R., S. N., 18; 10 W. R., 246]

KENARAM MULLICK v. RAMKOOBAR MOOKERJEE [2 W. R., Act X, 17]

173. ——— Rent in kind (Bhaoli).—*Act X of 1859, ss. 3 and 4.—Semble.*—A tenant who has paid at the same bhaoli rate—i.e., in kind—for a period of twenty years, is entitled to the presumption of section 4, Act X of 1859, and to exemption from enhancement under section 3. **RAM DAYAL SINGH v. LATCHMI NARAYAN**

[6 B. L. R., Ap., 25; 14 W. R., 388]

174. ——— Rent in kind (Bhaoli) varying in proportion to crop.—*Act X of 1859, s. 4.*—A bhaoli rent, varying yearly in amount in a fixed proportion to the produce of the crop, is not a fixed unchangeable rent of the nature contemplated by section 4 of Act X of 1859. **MAHOMED YACOOB HOSSEIN v. CROWDREY WAHYD ALLY**

[1 Ind. Jur., N. S., 29; 4 W. R., Act X, 23]

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—continued.****Uniformity in rate—continued.**

HANUMAN PARSHAD v. RAMJUG SINGH

[6 N. W., 371]

THAKOOR PERSHAD v. MAHOMED BAKU

[8 W. R., 170]

175. ——— Rent in kind, (bhaoli) varying with amount of yearly produce.—*Act X of 1859, ss. 3 and 4.—Act XVIII of 1873, ss. 5 and 6.*—A rent in kind (bhaoli) which, though it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion it is to bear to such produce, is a fixed rent within the meaning of section 3 of Act X of 1859 (corresponding with section 5 of Act XVIII of 1873). A tenant, therefore, in a permanently-settled district holding his land at such a rent is entitled to claim the presumption of law declared in section 4 of Act X of 1859 (corresponding with section 6 of Act XVIII of 1873), if he proves that, for a period of twenty years next before the commencement of the suit to enhance his rent, he has paid the same proportion of the produce of his holding. **HANUMAN PARSHAD v. KAULSAR PANDRY**

[1 L. R., 1 All., 301]

176. ——— Abatement of rent for unculturable land.—*Act X of 1859, s. 4.*—Where an abatement of rent was allowed in a lump sum upon a lump jumma on account of lands having been rendered unculturable by the overflow of a river, the abatement was held not to vary the rate of rent so as to debar the ryot from the benefit of the presumption under Act X of 1859, section 4. **RADHA GOBIND ROY v. KYAMUTOOLLAH**

[21 W. R., 401]

177. ——— Alteration in rate.—Proof of variation.—*Payment by tenant.*—A mere alteration in the rate of rent on the part of a zemindar or person other than the tenant will not prove a variation, unless it be shown that the tenant submitted to or paid that varied and enhanced rate. **GOPAL MUNDUL v. NOBBO KISHEN MOOKERJEE**

[5 W. R., Act X, 83]

178. ——— Variation of rent shown in dakhilas.—*Average of payments of rent.*—Where dakhilas are relied upon to prove uniformity of rent and any variation in the dakhilas is found to exist, there must be a distinct finding as to whether the short payments of one year were made up the next year, the variation *prima facie* being evidence that the rent was not uniform. **RAMJADOO GARGOOLY v. LUCKHEE NARAIN MUNDUL** . 8 W. R., 438

179. ——— Additional illegal cess for additional land.—*Immaterial variation.*—Additional rent for additional land, and the addition of a small illegal cess, are not such variations of the proper rent as deprive the tenant of the presumption

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.**

(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—continued.

Additional illegal cess for additional land—continued.arising from twenty years' payment of uniform rent.
SUMERROODREN LUSKUR v. HURONATH ROY

[2 W. R., Act X, 93]

180. ——— Slight variation.—Immaterial variation.—A variation of one anna is not sufficient to destroy the uniformity required by section 4, Act X of 1859. **MUNSOOR ALLY v. BUNO SINGH** 7 W. R., 282**181. ——— Immaterial variation.**—The variation of a few annas in the dahilas, when not proved to be a variation in the annual rents, is not sufficient to deprive the ryot of the benefit of the presumption. **TARA SOONDREY BURMONTA v. SHIBESSUR CHATTERJEE**

[6 W. R., Act X, 51]

ELANEE BUKSH CHOWDREY v. ROOPUN TELEE
[7 W. R., 284]**182. ——— Nominal reduction in jumma.—Immaterial variation.**—A nominal reduction in the jumma of one anna and three pies, and that too in the ryot's favour, is not a variation that deprives him of the benefit of the presumption created by section 4, Act X of 1859. But the acceptance of a temporary kabuliast annuls such presumption. **RAM-RUTHO SIRCAR v. CHUNDER MOOKHEE DEBIA**

[2 W. R., Act X, 74]

Nor does an unexplained variation of one rupee in a total jumma of sixty rupees. **ANUNDOLALL CHOWDREY v. HILLS** 4 W. R., Act X, 33**WATSON & Co. v. NUND LAL SIRCAR**
[21 W. R., 420]**183. ——— Alteration in jumma.—Immaterial variation.**—It must be a variation which affects the integrity of the jumma. **GOPAL CHUNDER BOSE v. MOTHOOR MOHUN BANERJEE**

[3 W. R., Act X, 132]

HILLS v. HURO LAL SEN . 3 W. R., Act X, 135**184. ——— Material difference.—Difference in amount.**—The difference between R11-13 and R13-4 was held sufficient to destroy the presumption of a uniform payment of rent. **BISSESSUR CHUCKERBUTTY v. WOONACHURN ROY**

[7 W. R., 44]

185. ——— Rent paid in different coinage.—Rent is not altered by being paid in a different coinage, *viz.*, in kaldar instead of sicca rupees, and the apparent addition of one anna per rupee (the difference in value between the two kinds of rupees) is not a real addition to the rent. **ROCHA RAM MISR v. NAGA DOSS** 2 N. W., 92**ENHANCEMENT OF RENT—continued.****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.**

(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—continued.

186. ——— Variation of rent from change of currency.—A variation of rent from change of currency only is not a variation rebutting the presumption arising from uniform payment for more than twenty years. **RAM COOMAR MOOKERJEE v. RUGOONATH MUNDUL** 1 W. R., 356See also **KALEE CHURN DUTT v. SHOSHEE DOSSEE**
[1 W. R., 248]**KATTYANI DEBEA v. SOORDURSE DEBEA**
[2 W. R., Act X, 60]See **MEKE MAHOMED HOSSAIN v. FORBES**
[22 W. R., 316: L. R., 2 I. A., 1]**187. ——— Consolidation of jummas.—Act X of 1859, s. 4.**—A consolidation of jummas into one tenure does not deprive the ryot of the benefit of the presumption under section 4, Act X of 1859, if it can be shown that the rent has not been changed. This principle applies also to jummas which have been derived in part or in whole with the consent of the landlord, and which are subsequently consolidated into one jumma. The presumptions of section 4 are not restricted to holdings, but refer simply to the fact that land has been held by a ryot at a rent which has not been changed for twenty years before the commencement of the suit. **RAJ KISHORE MOOKERJEE v. HURESHUR MOOKERJEE**

[1 B. L. R., S. N., 8: 10 W. R., 117]

188. ——— Holding created since decennial settlement.—He must be entitled to the presumption in respect of the whole tenure as consolidated. If one of the holdings constituting it is shown to have been created since the decennial settlement, the presumption cannot be made as to the rest. **MOULA BUKSH v. JODOONATH SADOO KHAN**

[21 W. R., 267]

189. ——— Presumption.—The consolidation of several holdings into one, or the omission of fractions by the settlement officer, cannot deprive a ryot of the benefit of the presumption under section 4, Act X of 1859. **LUKHI MONI HALDAR v. GUNGA GOBIND MUNDLE**

[W. R., 1864, Act X, 126]

KHODA NEWAZ v. NUBO KISHORE ROY
[5 W. R., Act X, 53]**190. ——— Division of holding among heirs.—Preservation of continuity of holding.**—The division of a ryot's holding among his heirs, the continuity of the holding not being destroyed, does not deprive the ryot of the benefit of the presumption under section 4, Act X of 1859. In the latter case the default of one shareholder will vitiate the tenure of all, and give the landlord a right of enhancement. **HILLS v. BESHARUTH MEER** 1 W. R., 10**191. ——— Division of tenure.—Act X of 1859, s. 4.—Extent of proof necessary.**—In order

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—continued.****Division of tenure—continued.**

to bring himself within sections 3 and 4, Act X of 1859, a ryot need only show that the particular land which is the subject of suit, not the whole tenure of which it may once have formed a part, has been held at an unchanged rent since the Permanent Settlement. It is not necessary that the land should have remained a separate holding. *KASERNATH NUSKER v. BAMA SOONDREY DOSSIA* . 10 W. R., 429

192. ——— Variation of rent of undivided fractional share.—*Act X of 1859, s. 4.—Presumption of uniformity.*—A change in the rent of an undivided fractional part of a tenure is to be considered as a change in the rent of the whole tenure and therefore destroys the presumption to be raised under section 4, Act X of 1859. *MAHOMED MUDDEN MIRDHA v. GOPAL LALL TAGORE* . 2 Hay, 514

193. ——— Distribution of rent after sale of portion of tenure.—*Beng. Act VIII of 1869, s. 4.*—The sale of a portion of a tenure involving a distribution of the rent over two parts does not amount to a change of rent within the meaning of Bengal Act VIII of 1869, section 4. *SOODHA MOOKHEE DOSSER v. RAM GUTTEE KURMOKAR*

[20 W. R., 419]

194. ——— Temporary holding by one of several joint owners under arrangement.—*Act X of 1859, s. 4.*—A temporary arrangement among joint owners by which one of their number is allowed to hold a portion of the joint property on payment of a certain sum of money, does not convert the occupier into a ryot holding at a fixed rent, or entitle him to the benefit of the presumption under section 4, Act X of 1859. *ROGHOOBUN TEWARER v. BISHEN DUTT DOBEY* . 2 W. R., Act X, 93

195. ——— Partition.—*Evidence of previous enhancement is a suit by another co-zemindar.*—*Talook.*—*Beng. Act VIII of 1869, s. 17.*—More than twenty years before the institution of a suit for the enhancement of the rent of a share in a dependant talook, the zemindari under which the talook was held was partitioned under a batwara among three zemindars. A ten-anna share was allotted to one (the present plaintiff), a four-anna share to another, and a two-anna share to a third. The talookdars continued to hold the entire property, and paid the rent apportioned by law severally to each of the parties entitled. In 1861, the owner of the two-anna share obtained a decree against the talookdars for enhancement of the rent of his share. In the present suit against the same talookdars, the defendants contended that the rent of their talook had not been changed for a period of more than twenty years before suit. *Held* that the "talook" which was intended by section 17 of the Rent Act, was the original talook; and that if the defendants could show that the rent of that talook had remained unchanged,

ENHANCEMENT OF RENT—continued.**3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—continued.****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—continued.****Partition—continued.**

either in its original entirety, or apportioned as it had been under the batwara, they would be entitled to the benefit of the section; but that the decree in the suit of 1861 had the effect of enhancing the rent payable for the whole talook, and that the plaintiff could avail herself of that decree, although she was not a party to it. *SARAT SOONDARY DABBA v. ANUND MOHUN SURMA GHUTTACK*

[I. L. R., 5 Calo., 273; 4 C. L. R., 448]

4. NOTICE OF ENHANCEMENT.**(a) NECESSITY OF NOTICE.**

196. ——— Intermediate tenure.—*Beng. Reg. VIII of 1793, s. 51.*—A person holding a tenure of an intermediate character is entitled to a notice under section 51, Regulation VIII of 1793, before his rent can be enhanced. *NILMONER SINGH v. CHUNDER KANT BANERJEE* . 14 W. R., 251

197. ——— Tullubi bromuttur tenure.—*Beng. Reg. VIII of 1793, s. 51.*—A tullubi bromuttur tenure, which has been held as such from the time of the decennial settlement, is such an intermediate tenure as entitles the holder to a notice under section 51, Regulation VIII of 1793. *NILMONER SINGH DEO v. CHUNDERKANT BANERJEE*

[I. L. R., 2 Calo., 125; 25 W. R., 200]

198. ——— Necessity of notice.—*Act X of 1859, s. 13.*—A suit for enhancement of rent cannot be supported without there has been a previous service of notice under Act X of 1859, section 13. *AKHAY SUNKUR CHUCKERBUTTY v. INDRA BHUSUN DEB ROY* . 4 B. L. R., F. R., 58

S. C. UKHOY SUNKUR CHUCKERBUTTY v. INDRO BHOSUN DEB ROY . 12 W. R., F. R., 27

199. ——— *Act X of 1859, s. 13.—Specification of grounds of enhancement.*—Under section 13 of Act X of 1859, no tenant is liable to enhancement unless he is duly served with a proper notice at a proper time specifying on what ground enhanced rent is demanded. *MAHTAB KOONER v. BULDEO SINGH* . 4 N. W., 58

BINDESSUREE DUTT SINGH v. DOMA SINGH [9 W. R., 83]

BURODA KANT ROY v. RADHA CHURN ROY [13 W. R., 163]

200. ——— Express engagement for specified rent.—*Act X of 1859, s. 13.*—Section 13, Act X of 1859 (requiring previous service of notice) has no application to a case in which there is an express written engagement between the parties providing for the payment of rent at a specified rate from a specified point of time. *BHAYRU CHUNDER MOJOMDAR v. HURO PROSUNNO BHUTTACHARJEE*

[17 W. R., 256]

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(a) NECESSITY OF NOTICE—continued.**

201. ——— Under-tenants and ryots.—
Specification of grounds of enhancement.—Ground of enhancement.—Act X of 1859, s. 13.—Section 13 of Act X of 1859 is applicable not merely to ryots having rights of occupancy, but to all under-tenants and ryots. The landlord cannot, by giving notice of enhancement, compel the tenant to pay more than a reasonable rent, and he cannot enhance without notice specifying the grounds of enhancement.
BAKRANATH MANDAL v. BINODRAM SEN

[1 B. L. R., F. B., 25: 10 W. R., F. B., 33

202. ——— Ryot without express engagement.—Act X of 1859, s. 13.—Reg. VII of 1822, ss. 7 and 9.—Where an under-tenant holding or cultivating land under the conditions mentioned in section 13, Act X of 1859, enters into no fresh engagement at the time of re-settlement, he has a right to receive a written notice before he can be called upon to pay enhanced rent, the provisions of that section qualifying those of sections 7 and 9, Regulation VII of 1822. **D'SILVA v. RAJCOOMAR DUTT**

[16 W. R., 153

See ENAYTOOLLAH MEAH v. NUBO COOMAR SIRCAR 20 W. R., 207

WOOMANATH ROY CHOWDHRY v. DEBNATH ROY CHOWDHRY 16 W. R., 471

203. ——— Suit to set aside alleged right to quit-rent tenure.—Act X of 1859, s. 13.—No notice is required under section 13, Act X of 1859, to set aside an alleged right to a quit-rent tenure in a suit for declaration of title. **GHUNSHYAM CHOBEY v. KASHENATH SHANTERKAR**

[3 W. R., Act X, 4

204. ——— Accreted land afterwards diluviated.—Act X of 1859, s. 13.—In a suit brought by a zemindar for two years' rent on account of newly-formed land which had accreted to the defendant's old jote, but had since diluviated, wherein the Civil Court decreed the rent, allowing defendants to retain possession as tenants, *Held* that no notice was necessary under section 13, Act X of 1859, before rent could be demanded by the zemindar in the case. **WATSON & Co. v. NEEL KANT SIRCAR**

[10 W. R., 330

205. ——— Suit for arrears of rent of excess land.—Act X of 1859, s. 13.—A suit for arrears of rent of a quantity of land alleged to have been held by defendant over and above the quantity covered by his pottah was held to be in substance a suit for rent at an enhanced rate, requiring the issue of a notice under section 13, Act X of 1859. **THEK-MEN BEIDAR v. RAM KISHEN LALL**

[15 W. R., 71

206. ——— Decree for rent according to yearly assessment.—Act X of 1859, s. 13.—Where a decree of 1848 gave plaintiffs the right to assess and to receive the rents for each year according to the assessment made for that particular year, a notice under section 13, Act X of 1859, was held

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(a) NECESSITY OF NOTICE—continued.**

Decree for rent according to yearly assessment—continued.

not necessary when the rent found assessable for the years for which rent was claimed varied from what was found assessable in 1848. **SALEHOONISSA KHATOON v. MOHSEN CHUNDER ROY**

[17 W. R., 452

207. ——— Land held under ootbun-dee tenure or otherwise.—Act X of 1859, s. 13.—Whether land is held under an ootbun-dee tenure or not, the tenant is entitled to notice under section 13, Act X of 1859, before the rate at which he pays can be enhanced. **DWARAKANATH MISRE v. NOBOO SIRDAR 14 W. R., 193**

208. ——— Lease, stipulation in for increase or decrease of rent according to excess or diminution in amount of land.—Beng. Act VIII of 1869, s. 14.—A lease from generation to generation gave the boundaries of the land leased, estimated the area thereof, and fixed a certain rent per bigha. It contained a condition that if on measurement the actual quantity of land should turn out to be either more or less than the estimated area, the rent should be increased or decreased in proportion at the same rate per bigha. In a suit for enhancement of rent, on the ground that the land leased contained more than the estimated number of bighas, the lease being one which did not specify the period of the engagement, *Held* that notice of enhancement was necessary under Bengal Act VIII of 1869, section 14. **EKRAM MUNDUL v. HULODHUR PAL**

[1. L. R., 3 Calc., 271

209. ——— Stipulation in pottah for increase in rental to be made yearly.—Beng. Act VIII of 1869, s. 14.—*Suit to recover rent as per pottah.*—Where a pottah in its terms expressly stipulates for an increase of rental according as the lands let are brought under cultivation, and a measurement taken, a landlord is entitled to recover such increased rent as agreed upon in the pottah without serving on the tenants any notice under section 14 of Bengal Act VIII of 1869. **NISTARINI DASI v. BONOMALI CHATTERJI. DINO NATH DAS v. BONOMALI CHATTERJI 1. L. R., 4 Calc., 941**

[4 C. L. R., 278

210. ——— Lands found in excess.—A notice of enhancement, according to the rate mentioned in an agreement, is necessary as to lands found in excess on measurement where no term is specified in the written agreement. **BUDODAKANT ROY v. SIB SUNKURSE DOSSEE**

[4 W. R., Act X, 35

211. ——— Contract to pay for excess land after measurement.—Notice.—Rent Act (Beng. Act VIII of 1869), s. 14.—When a tenant contracts to pay rent at a certain rate for any such land as upon measurement may be found to be in excess of the estimated area, it is not necessary to serve him with notice under section 14 of

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(a) NECESSITY OF NOTICE—continued.****Lands found in excess—continued.**

the Rent Act before instituting a suit for the rent of any additional land, nor is it necessary that he should be present at the measurement. **DWARKANATH v. BABURAM LASKER**. **I. L. R., 9 Calc., 72**
[**11 C. L. R., 326**

212. ————— *Mistake in measurement.*—*Act X of 1859, s. 17.*—Section 17, Act X of 1859, is applicable to cases where the land was undoubtedly included in the original tenure, but it has been found in a fresh measurement that there was some mistake in the former measurement, and that a greater amount of rent ought to be paid, not in respect of any fresh land, but in respect of land which was included in the original tenure. **PRANKISSEN BAGCHEE v. MONMOHINEE DASSEE**
[**17 W. R., 33**

213. ————— *Bengal Act VIII of 1869, ss. 18 and 19.*—*Rent of excess lands.*—In a suit for arrears of rent after deduction of payments where the claim embraced excess lands found after measurement, and was based on a kabuliati which stipulated that the ryot would pay for such excess at the same rate as for the rest of the land, and from the date of the kabuliati,—*Held* that there was no question of enhancing the rate of rent, and the ryot was not entitled to notice under Bengal Act VIII of 1869, sections 18 and 19. **RAM NARAIN LALL v. GUMBEER SINGH**. **19 W. R., 108**

214. ————— *Accreted land.*—*Enhancement of rent after accretion.*—*Notice of enhancement.*—*Beng. Act VIII of 1869, s. 14.*—*Reg. XI of 1825, s. 4, cl. 1.*—Before increased rent, on the condition laid down in Regulation XI of 1825, section 4, clause 1, on account of the area of land held by a tenant under a permanent tenure having been increased by accretion, can be recovered, a notice must be served upon the tenant under section 14 of Bengal Act VIII of 1869, informing him of the amount of rent to be imposed and the grounds upon which it is claimed. **RAMNIDHEE MANJEE v. PARBUTTY DASSEE**
[**I. L. R., 5 Calc., 323; 6 C. L. R., 362**

215. ————— *Landlord and tenant.*—*Arrears of rent.*—*Suit for.*—*Notice of enhancement.*—When land has accreted to a ryot's holding, the rent paid by the ryot may be enhanced in respect thereof under the provisions of clause 3, section 18 of Bengal Act VIII of 1869; and no suit for rent in respect of such accretion will lie unless a proper notice of enhancement has been previously given. **Ramnidhee Manjee v. Parbutty Dassee, I. L. R., 5 Calc., 323**, followed. **BROJENDRA COOMAR BHOO-MICK v. WOOPENDRA NARAIN SINGH**
[**I. L. R., 8 Calc., 706**

216. ————— *Suit after permission to hold at old rent.*—*Subsequent to declaration of right to enhance.*—In a former suit brought by a ryot against the holder under a temporary ijara extending

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(a) NECESSITY OF NOTICE—continued.****Suit after permission to hold at old rent—continued.**

down to 1271, a decree was passed maintaining the ijaradar's right to enhance. But notwithstanding this decree the ryot was by express agreement allowed, and in fact continued, to hold at the old rates. On the expiration of the ijara the zemindar entered upon the lands, and after collecting a part of the rents for 1272 gave the plaintiff a putni of the estate from 1273, and an assignment of the right to collect the uncollected portion of the rents of 1273. The putnidar now sues to recover from the defendant the rent for the remainder of 1272 and for 1273, at the enhanced rates decreed to the ijaradar. *Held* that neither the zemindar nor the putnidar could recover enhanced rents from the ryot without some notice. **BODHNARAIN SINGH v. RUNGO LALL MUNDUR**
[**7 W. R., 190**

217. ————— *Previous decree after notice before Act X of 1859.*—*Suit for subsequent arrears.*—Where notice of enhancement was issued according to the law in force before Act X of 1859, and a decree obtained by the zemindar which ascertained the liability of the cultivator to an enhanced rate of rent and awarded arrears at that rate,—*Held* that a suit by the zemindar for arrears for the years subsequent to the decree at the enhanced rate thereby determined was legal and good without issue of any fresh notice under Act X of 1859, and the effect of the decree ascertaining the liability to enhanced rent still continued, notwithstanding it was not executed and arrears not recovered under it. **MOUZZUM ALI KHAN v. SHEORUTTUN SINGH**. **3 Agra, 277**

218. ————— *Necessity for fresh notice.*—*Act X of 1859, s. 13.*—*Notice of enhancement.*—Where a zemindar served a notice of enhancement of rent on the ryots of a mouzah, and afterwards granted a lease of the mouzah to the plaintiff,—*Held*, the plaintiff was entitled to sue for enhancement upon the notice already served. **KHASKI ROY v. FARZAND ALI KHAN**
[**9 B. L. R., 125; 18 W. R., 144**

(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—

219. ————— *Accuracy and precision in notice.*—*Notice to pay lump sum on land in possession.*—A notice of enhancement must be reasonably accurate and precise. A notice to pay a lump sum on the whole land in and out of defendant's possession is not sufficient. **TARACHAND ROY v. KEN-NARAM KURMOKAR**
[**W. R., 1864, Act X, 118**

220. ————— *Prospective notice.*—*Dis-advantage to tenant.*—A notice of enhancement should not be prospective, the principle being that the ryot should be prepared to meet the claim on grounds existing at the time the notice is received. **BYJNATH KOONWAR v. SAHAB KOONWAR**
[**12 W. R., 532**

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.**

221. — Requisites for notice.—*Precise nature of claim.*—The great strictness with which cases involving questions as to the form of notice of enhancement were dealt with has been relaxed in the later practice of this Court, and it has been held in the later rulings that a notice is good if, without containing the exact terms of the law, it states with sufficient precision the nature of the claim, the amount asked for, and the grounds on which the enhancement is sought, so that the ryot served with the notice may not be misled, and can clearly comprehend the case which he has to meet. **MCGIVREAN v. HURKHOO SINGH . 18 W. R., 203**

222. — Notice based on simple ground of rents having become less.—*Abatement.*—*Beng. Reg. VIII of 1793, s. 51.*—A notice of enhancement of the rent of a talook on the simple ground of the rents having become less by degrees is not based on the "abatement" contemplated by section 51, Regulation VIII of 1793, or any of the other grounds specified in that section. **NUBO KRISTO MOJOMDAR v. TARA MONN . 12 W. R., 320**

223. — Abatement.—*Beng. Reg. VIII of 1793, s. 51.*—In a suit by a zemindar against his talookdar for an increase of rent under Regulation VIII of 1793, section 51, the notice served was held to be defective, because it did not state when and for what reason the talookdar had received an abatement of his jumma, and thereby rendered himself liable for the increase demanded. **NOBO KISHEN BOSE v. MAZAMOODEEN AHMED CHOWDERY [19 W. R., 338]**

224. — Notice describing intermediate as ordinary tenant.—*Reg. VIII of 1793, s. 51.*—A notice describing an intermediate holder as an ordinary tenant and avowedly served under Bengal Act VIII of 1859, section 18, cannot be considered such a notice as is required by the provisions of Regulation VIII of 1793, section 51. **KOOMODINEE KANT BANERJEE CHOWDERY v. HURSH CHURN TUFADAR . 24 W. R., 190**

225. — Specification of rent and grounds of enhancement.—*Dependent talookdars.*—*Reg. VIII of 1793, ss. 48 and 51.*—*Non-registration.*—Tenants holding a permanent transferable interest intermediate between the proprietor and the ryots, and one which has been in existence from the time of the decennial settlement, are entitled, before they can be sued for enhancement of rent, to a notice which not only specifies the rent, but also states the ground on which enhancement is claimed, and shows how the landlord has the right of enhancement, as well as the particular ground on which the rent is to be raised. The fact of not having been registered under the provisions of Regulation VIII of 1793, section 48, does not deprive them of the benefit of section 51. **NILMONY SINGH v. RAM CHUCKERBUTTY [21 W. R., 439]**

SHIB NARAIN GHOSH v. AUKHIL CHUNDER MOOKERJEE . 22 W. R., 485

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.**

226. — Specification of general grounds.—*Proof of grounds specified.*—A notice of enhancement of an intermediate tenure, specifying that the tenant holds more lands than he originally did, and that the productive powers of the land and the value of the produce have increased otherwise than by the agency or at the expense of the tenant, is sufficient if the grounds are proved to exist, and if the rent claimed as fair and equitable is not more than is paid by the holders of similar tenures in the pergunnah or neighbourhood. **GRISH CHUNDER GHOSH v. RAMTUNOO BISWAS . 12 W. R., 449**

227. — Specification of particular grounds.—*Beng. Act VIII of 1859, s. 18.—Schedule appended to notices.*—In notices of enhancement of rent it is absolutely necessary that in the statement of grounds there should be some words to show that it is the intention of the landlord to proceed under some particular clause or clauses of section 18, Bengal Act VIII of 1859. It is not sufficient to leave this to be inferred from a schedule appended to the notice. **HOORUL MUNDER v. HUREUCK DUTT KHOWAS . 22 W. R., 429**

228. — Act X of 1859, s. 19.—*Sufficiency of notice of enhancement.*—It is not sufficient for a notice of enhancement of rent to allege generally the grounds of enhancement mentioned in section 17, Act X of 1859. It should set forth specific and tangible grounds of enhancement applicable to the particular case. **DWARKA NATH CHOWDERY v. BEEJOY GOBIND BURAL [10 W. R., 333]**

SHUMSOOL OSMAN v. BUNSHEDHUR DUTT [15 W. R., 366]

BANEE MADHUB CHOWDERY v. TARA PROSUNNO BOSE . 21 W. R., 33

KALKE KANT CHOWDERY v. BHOOBUNNESSUREE CHOWDHRAIN . 22 W. R., 416

229. — Notice not setting out grounds as in s. 17 of Act X of 1859.—A notice of enhancement which did not set forth grounds of enhancement in the words of section 17, Act X of 1859, held not a sufficient notice. **RAM SARAN SING v. BHAJAN DOBAY KARPAIDAZ [6 B. L. R., Ap., 155: 11 W. R., 515]**

230. — Suit for enhancement of rent dismissed on the ground of the insufficiency of the notice of enhancement in not specifying the grounds on which it was sought in accordance with section 17, Act X of 1859. **DINANATH DASS v. GUGAN CHANDRA SEN [7 B. L. R., Ap., 45, note: 14 W. R., 274]**

KALINATH CHOWDERY v. HUMI BIBI [7 B. L. R., Ap., 47, note: 12 W. R., 506]

KHONDKAR ARDOOR RUKMAN v. WOOMA CHURN ROY . 8 W. R., 330

SYEFOOLLA KHAN v. KALKE PRESHAD SAHOO [20 W. R., 256]

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.**

231. ——— Indefinite and uncertain notice.—Notice of enhancement should distinctly set forth the grounds upon which enhancement of rent is sought. Notice of enhancement to the effect "that as the rent of the land" (in the occupation of the tenant) "is below the rates prevailing in the pergunnah and in adjacent places, and as the productive powers of the land and the value of the produce have increased, and as the patit lands have been cultivated, I am entitled to receive from you Rs 794-5-7-11½ per annum," was held to be indefinite and uncertain; and therefore no suit thereon could lie for enhancement of rent. **GOBIND KUMAR CHOWDREY v. HURO CHANDRA NAG**

[5 B. L. R., Ap., 61: 11 W. R., 571
21 W. R., 442, note

NILMONEY SINGH v. SAGURMONEE DEBIA
[12 W. R., 441

KALI CHANDRA CHOWDREY v. RATAN GOPAL BHADHURI . 4 B. L. R., Ap., 62, note

HEERALAL SRAI v. GUNGADHUR SENAPUTTY
[1 Ind. Jur., O. S., 8
W. R., F. B., 19: Marsh., 60: 1 Hay, 229

232. ——— Notice not specifying clause or section of Act under which enhancement was sought.—A notice of enhancement held to be sufficient although it did not specify in terms the clause or section of the Act under which enhancement was sought. **KUMAR PARBESH NARAIN ROY v. GAUR SUNKER BHUMICK**

[6 B. L. R., Ap., 154: 15 W. R., 39

RADHA BALLAB GHOSH v. BEHARIL MOOKHERJEE
[6 B. L. R., Ap., 155: S. C. 12 W. R., 537

233. ——— A notice of enhancement stated that "you the defendants pay less than other ryots in the neighbourhood, and therefore you are to pay for the future such and such rates," held not a sufficient notice as contemplated by section 17, Act X of 1859. **SHEMSULOSMAN v. BANSIDHAR DUTT** 7 B. L. R., Ap., 32

234. ——— In a suit for enhancement of rent of an intermediate tenure, a notice to the following effect was held sufficient: "You (defendant) hold a takshishi talook, the rent of which has always been of a varying nature; you have been called upon to make a settlement with your landlord at the pergunnah rates; by the immemorial custom of the pergunnah, the holders of such talooks as yours, after deducting 10 per cent. of the fair jumma for collection charges, and 10 per cent. for malikana, are bound to pay the residue as rent to the zemindar. You hold so much land which, according to rates paid for similar kinds of land in the same and adjacent villages, ought to pay such and such a gross rental; from this deducting your 20 per cent. on account of malikana and collection charges, the remainder (so much) ought to be paid to me as my rent, and you

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.**

Notice not specifying clause or section of Act under which enhancement was sought—continued.

are hereby called upon to pay that amount." **JAN-NORA v. GIRISH CHUNDR CHUCKERBUTTY**
[7 B. L. R., Ap., 44: 15 W. R., 385

235. ——— Omission to state mode of increase of produce or productive powers of land.—A notice of enhancement under the second clause of section 17, Act X of 1859, is defective if it omits to state that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot himself. **SOOJAAT ALI v. HURRI THAKOOR**
[8 W. R., Act X, 44

236. ——— Notice with ground vaguely stated.—A notice based on the first of the grounds in section 17, Act X of 1859, and specifying "that the rates paid are below those paid for similar lands in adjacent places," was held to be bad. **SHIB NARAIN DUTT v. KERAMOONISSA BEGUM** . 17 W. R., 356

237. ——— Notice with ground incorrectly stated.—"Surrounding rates."—Act X of 1859, s. 17.—That a tenant is holding at a rent lower than surrounding rates is not a sufficient ground to be specified in a notice of enhancement; the words "surrounding rates" being not tantamount to the ground of enhancement indicated in section 17, Act X of 1859. **BOYDONATH v. RAMJOY DEY**
[9 W. R., 292

238. ——— Notice not stating quantity of land.—*Excess land.*—A notice under section 13, Act X of 1859, for enhancement of rent upon land held by a ryot in excess of the land for which he pays rent to the zemindar, must state the quantity of land so held in excess. The mere statement of "excess land" is not a sufficient compliance with the provisions of the law. **GIRISH CHANDRA GHOSH v. ISWAR CHANDRA MOOKHERJEE**
[8 B. L. R., A. C., 337: 12 W. R., 226

239. ——— Notice stating simply that rates are lower than neighbouring rates.—*Enquiry as to rate of rent paid by neighbouring ryots.*—In a suit for enhancement of rent where the ryots plead that their relations with the zemindar are peculiar, it is not sufficient for a notice to set forth, and for a Court to find, that the rent paid in respect of the land in dispute is lower than the rent paid in respect of neighbouring lands: the Court is bound to enquire into the status and situation of the defendant's ryots with those of the ryots of the neighbouring lands. **LALLA ROGHOOBUN SAKHOY v. ASLOO** 20 W. R., 294

240. ——— Notice not stating year for which enhancement is sought.—Act X of 1859, s. 13.—A notice of enhancement under section 13, Act X of 1859, is not required to state that it is for the ensuing year. **GUADADHUR BANERJEE v. NUND LAL BISWAS** . 3 W. R., Act X, 145

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.**

241. ———— **Notice that land will bear higher rent.—Tenant-at-will.**—A notice of enhancement, on the ground that the land will bear a higher rent, is a good and valid notice as against a tenant-at-will. *ROGHOOBUN TEWARIE v. SHIB DUTT* 4 W. R., Act X, 48

242. ———— **Notice with some insufficient reasons for enhancement.—Act X of 1859, s. 13.**—In the case of a tenant who has no right of occupancy, a landlord's notice of enhancement under section 13 of Act X of 1859 is valid, if it specifies the rent to which the tenant will be subject for the ensuing year and the ground on which the enhancement is claimed, even if among the reasons assigned are some which will not bear examination. The only limit to the landlord's power of enhancement after notice is the fairness and reasonableness of the rent. *SREEGOPAL MULLICK v. DWARKANATH SHIN* 15 W. R., 520

243. ———— **Notice in case of distinct holdings.—Act X of 1859, s. 13.**—A landlord serving notice of enhancement under section 13, Act X of 1859, has no right to consolidate distinct and independent holdings, without the consent of the ryot. The ryot, on the other hand, is entitled to a notice or notices specifying the several holdings in his possession, the amount of enhanced rent he is liable to pay upon each, and the ground of such enhancement upon each instance. *BREJOY GOBIND BURAL v. JANMOBE BROMONYA* 8 W. R., 252

DENOBUNDHO BHADOORE v. PRANKISHEN SURMA 20 W. R., 146

DWARKANATH HALDAR v. HUREN MOHUN ROY [20 W. R., 404

NIDHOO MONIE JOGINEE v. KISHEN NATH BANERJEE 20 W. R., 442

244. ———— *Beng. Act VIII of 1869, s. 15.—Distinct holdings.*—A notice of enhancement, under section 15 of Bengal Act VIII of 1869, must, when the tenant holds different jotes, the rents of which it is sought to enhance, distinctly specify the several holdings, the amount of enhanced rent claimed in respect of each holding, and the grounds for claiming such enhanced rent. *UDOTARA CHOWDEHRAIN v. SHIB NATH SURMA BAHADOORI* 9 C. L. R., 207

245. ———— *Separate holdings.*—A notice of enhancement of rent need not be on a separate piece of paper for each holding; all that is required is that it shall be so distinct for each holding that the tenant may be able to distinguish those in respect of which he does not object to the enhanced rent, from others in respect of which he declines to pay it. *McGIVERAN v. DURIAN CHOWDEY* 20 W. R., 479

246. ———— **Notice in case of land consisting of two or more plots.—Beng. Act VIII of 1869, s. 13.**—When the lands, the rent of which is

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.**

Notice in case of land consisting of two or more plots—continued.

sought to be enhanced, consist of more than one plot, it is not sufficient for the landlord to serve the tenant with a notice of enhancement, specifying all the three grounds of enhancement mentioned in section 13 of Bengal Act VIII of 1869. Such notice should specify the particular ground or grounds on which each separate plot is alleged to be liable to enhancement. *Semble*,—This would not be so if the same ground or grounds applied to every plot the rent of which is sought to be enhanced. If in a suit for enhancement the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion. *GUNNES CHUNDER HAZRA v. RAMPRIA DEBHA* 1 L. R., 5 Calc., 53

247. ———— **Notice given by agent.—Farmer as agent of zemindar.**—A notice of enhancement by a farmer as agent and on behalf of the zemindar is legal. *HEM CHUNDER CHATTERJEE v. POORAN CHUNDER ROY* . 3 W. R., Act X, 162

248. ———— *Notice signed by naib.—Evidence of authority to sign.*—A notice of enhancement of rent under section 13 of Act X of 1859, signed by the naib of the landlord, is valid, without evidence that he was specially authorised to sign the notice. *DHEUMBUR MITTHER v. GOBINDO CHUNDER HALDER* . *Marsh*, 354: 2 *Hay*, 402

249. ———— **Notice by bringing suit.—Act X of 1859, s. 13.—Plaint.**—The plaint in a suit for enhancement is not a substitute sanctioned by law for the notice of intended enhancement required to be given by section 13 of Act X of 1859. *SOBHA MAHTON v. PARABOO* 2 N. W., 310

250. ———— **Notice by suit.—Act X of 1859, s. 13.—Decree in contested suit.**—Following a previous decision of a Division Bench, *Modhoo Soondun Koondoo v. Gopce Kishen Gossain*, 6 W. R., Act X, 81, it was held that a judgment passed against a ryot in a contested suit operates as a notice to him under section 13, Act X of 1859, taking effect from the commencement of the year following that in which the decree was passed. *RAMANATH DUTT v. JOYKISHEN MOOKERJEE* 11 W. R., 3

251. ———— **Notice by measurement.—Measurement made in previous suit.**—In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease, and the defendant claimed in that suit to have the rent reduced in accordance with the terms of the lease, and a measurement was thereupon made, which showed that the quantity of land held by the defendant was in excess of that named in the lease: that suit was decided in favour of the plaintiff for the rent claimed. *Held*, that the measurement adopted by the Court in the former suit was not, as regards

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND
INFORMALITIES IN—continued.****Notice by measurement—continued.**

the amount of the excess, binding upon the defendant, and that, even if it were, the fact of such measurement would be no sufficient notice of enhancement to the defendant. **EXRAM MUNDUL v. HOLODHUR PAL** . . . **I. L. R., 3 Calc., 271**

252. ——— **Notice not of sufficient length.—Right to enhancement.—Insufficient notice.—Inamdar.**—An inamdar is not entitled to recover an increased rent if he has given notice of such increase in December 1870 for the current year 1870-71. **HABI YEMAJI v. PARSHRAM GUNDO** [11 Bom., 23]

253. ——— **Notice containing clerical error of omission.—Immaterial error.—Act X of 1859, s. 17.**—Where a defendant has known perfectly well the grounds upon which enhancement of rent is demanded from him, a clerical omission which in no way prejudiced the defendant cannot operate to invalidate the notice of enhancement under section 17, Act X of 1859. **RYESUNNISSA BEGUM v. BYDONATH SAHA** . . . **17 W. R., 354**

254. ——— **Notice where defendant was aware of ground of enhancement.—Act X of 1859, s. 17.**—The object of the notice of enhancement is that the defendant may know what are the grounds on which the plaintiff seeks to enhance his rent, so that he may have an opportunity of coming forward to contest any of those grounds; and as the defendant's own answer in the case showed that he was fully aware of and came forward to contest the main ground on which the plaintiff sought to enhance his rent, the notice issued by plaintiff was held to be sufficient to meet the requirements of section 17, Act X of 1859. **TIRTH NUND THAKUR v. MOHUR MUNDLE** . . . **17 W. R., 273**

255. ——— **Informality in notice.**—Informality in a notice for enhancement of rent was not allowed to prevail in this case where the defect was held to have been made good by the evidence on the record, and where there could be no doubt that the tenant knew exactly the nature of the demand he had to meet, and where also the objection was a mere after-thought and not put forward until after the order of remand by the High Court. **WOOMA CHURN DUTT v. GRISH CHUNDER BOSE** [17 W. R., 32]

256. ——— **Omission in notice.**—Where a ryot well knew and pleaded to the grounds of enhancement, the mere omission of the words "same class of ryots" in the notice was held not fatal to the plaintiff's suit. Nor was the omission of the words "otherwise than by the agency and at the expense of the ryot" considered material when the plaintiff distinctly stated in his plaint that the productive powers of the soil had increased owing to the land having been irrigated from the plaintiff's khas tank. **WATSON & Co. v. RAM DHUN GHOSH** . **17 W. R., 496**

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND
INFORMALITIES IN—continued.****Omission in notice—continued.**

257. ——— **Act X of 1859, s. 17.**—The omission of the words "same class of ryot" in a notice under Act X of 1859, section 17, even if unintentional, is sufficient to invalidate a claim for enhancement. *Quære*,—Would this be the case, if notwithstanding the omission, the ryot knew all the grounds on which enhanced rent was demanded of him, and defended himself on all? **SAYEPOOLLAH KHAN v. CHAYA THAKOOR** . **18 W. R., 532**

258. ——— **Informality in notice.—Dismissal of suit for want of proper notice.—Obiter dicta.**—Where a suit for enhancement of rent is dismissed on the ground that no notice was served, any decision in the Court's judgment as regards the mal or lakhiraj character of the land must be deemed to be mere obiter. Where it is found in such a suit that the notice did not state that the ryot pays less than ryots of the same class, the informality may be overlooked if there is evidence on the record of the rates of rent payable by such ryot; but if there is no evidence of that nature, the suit must be dismissed. **MOTHOORNATH SIRCAR v. NIL MONEE DEO** [13 W. R., 297]

259. ——— **Omission to specify among grounds stated those relied on.**—The plea of informality of notice on the ground that it contained all the grounds of enhancement allowed by law without specifying any as those relied on, was disallowed, inasmuch as the ryot had not shown that he had been prejudiced thereby, or had been in any difficulty as to what he was called upon to answer. **GOPEENATH JANNAH v. JETOO MOLLAH** [18 W. R., 272]

HUSMUT ALI v. OUREE THAKOOR [20 W. R., 232]

ODDH BEHARRI SINGH v. DOST MAHOMED [22 W. R., 185]

260. ——— **Notice fully comprehended by tenant.—Contesting suit for enhancement.**—A ryot who has received a notice of enhancement may be in a different position relative to its sufficiency according as he waits until a suit is brought against him, or comes into Court of his own accord to attack the notice. In the latter case, if he frames his suit on a thorough understanding of the notice, he cannot object to it as not reasonably sufficient. **RAM BHURSHI SINGH v. MAHOMED ASGURRI KHAN** [19 W. R., 205]

261. ——— **Mistake in notice.—Notice erroneously including lakhiraj land.**—A suit for enhancement should not be dismissed merely because the plaintiff has included in his notice of enhancement land belonging to the defendant's lakhiraj holding. **CHUNDER COOMAR ROY v. BROLANATH SIRCAR** [W. R., 1864, Act X, 110]

262. ——— **Notice erroneously including lakhiraj land.**—A notice for en-

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.****Mistake in notice—continued.**

hancement, otherwise sufficient, is not invalidated because a portion of the lands claimed as enhanceable in such notice turns out to be rent-free land; but is good so far as it is applicable to the portion of the land which is liable to enhancement. *NEWAJ BUN-OPADHYA v. KALI PROSONNO GHOSH*

[I. L. R., 6 Calo., 543; 8 C. L. R., 6

263. ——— Notice of enhancement in respect of portion of land.—*Validity of notice.*—Notice of enhancement, issued on the application of the person to whom the rent is payable, on account of any part of the land in respect of which the notice is served, is good for that part. *GURDOO MULL v. HOOLASHEE*

2 Agra, 247

264. ——— Notice to talookdar as for a ryot.—*Act X of 1859, s. 13.*—The rent of a talookdar cannot be enhanced under a notice treating him as a ryot having a right of occupancy. *DOYAMOYEE CHOWDHRAIN v. MOHIMA CHUNDER ROY*

[12 W. R., 137

265. ——— Notice to non-cultivator treated as ryot.—Where a party who was not personally a cultivator of the land, but held a large jumma with a number of ryots below him, was treated, in a notice of enhancement under clause 17, Act X of 1859, as an ordinary ryot having a right of occupancy, it was held that the notice was not on that account illegal or informal. *KALEE PROSONNO GHOSH v. HURISH CHUNDER DUTT*

15 W. R., 57

266. ——— Notice of excess after measurement.—*Statement of proof of measurement.*—In a suit for enhancement of rent after notice, on the allegation that the defendant holds land in excess of the area admitted by him to be in his occupation, it must be shown that the notice stated that such excess has been proved by measurement. *KALEE KUMARY DOSSEE v. SHUMBRIOO CHUNDER GHOSH*

[6 W. R., Act X, 23

267. ——— Variation between notice of enhancement and plaint.—A plaintiff is not to be prejudiced by reason of his plaint demanding less rent than that specified in his notice to enhance, when such notice has not been disputed until after action brought. On the other hand, the plaintiff cannot recover higher rent than that demanded in the notice of enhancement. *HILLS v. PANCH COURER SHEIKH*

[1 W. R., 3

268. ——— Notice not followed immediately by suit.—*Validity of, for future suit.*—*Act X of 1859, s. 13.*—The object of section 13, Act X of 1859, is that a suit for enhancement should not be brought without previous due notice, and not that when a notice under that section has been once duly given, if the tenant does not immediately, on service of notice, give up the tenure, a suit for enhanced rents for the next and following years must be brought

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.****Notice not followed immediately by suit—continued.**

within the said year. *MAHOMED ROHIMOODEEN v. RADHA MOHUN MUNDUL*

6 W. R., Act X, 96

269. ——— Notice, Effect of, as regards rent after suit.—In a suit for arrears of rent of a particular year, after notice of enhancement on specified grounds, plaintiff (if his title is established) can only have a decree for the arrears claimed, and on one or other of the grounds alleged. The Judge has no jurisdiction in appeal to declare his right to any enhanced rents for the future. *BHOORUN MOHINEE DOSSEE v. KEDARNATH BOSH*

12 W. R., 141

270. ——— Notice omitting grounds of enhancement.—*Act X of 1859, s. 13.*—*Auction-purchaser.*—Under section 13, Act X of 1859, a ryot served with a notice of enhancement, which is silent about the ground of enhancement, is not liable to pay the higher rent. An auction-purchaser is no exception to the rule by which every landlord is bound to ascertain the nature, extent, and conditions of his ryot's holding before he serves him with a notice of enhancement. A ryot is competent to object to the legality of a notice of enhancement even in a suit in which he is plaintiff. *LALLA SINGH v. REAZOONISSA*

[8 W. R., 271

271. ——— Notice to zimmadars in talook.—*Act X of 1859, s. 17.*—Section 17, Act X of 1859, applies only to ryots, not to zimmadars having a tenure of a talooki character. *PANIOTY v. JUGGUT CHUNDER DUTT*

9 W. R., 379

272. ——— Notice on first of grounds stated in s. 17.—*Act X of 1859, s. 17, cl. 1.*—*Semle* (by MARKBY, J.).—That when a landlord gives notice of enhancement to a tenant on the first of the grounds stated in section 17, Act X of 1859, he treats him as a ryot having a right of occupancy. *THAKOOR DUTT SINGH v. GOPAL SINGH*

14 W. R., 4

273. ——— Notice to tenant as ryot.—*Act X of 1859, s. 17.*—*Suit for enhancement as against him as under-tenant.*—By serving a notice on defendant under the terms of section 17, Act X of 1859, plaintiff was held to have treated defendant as a ryot having a right of occupancy, and to be debarred from suing him for enhancement of rent as an under-tenant or middleman. *CHUNDERNATH GHOSH v. SHOTOORAM MOJOOMDAR*

12 W. R., 343

274. ——— Notice, Effect of, as admitting valid tenure or right of occupancy.—*Presumption of nature of tenancy.*—*Onus of proof.*—When a zamindar sues to enhance the rent of a talookdar, and specifies certain churs as part of the land the rent of which is to be enhanced, he, by implication, must be considered to admit that the tenant has some valid tenure or right of occupancy in the land mentioned in the notice. *Bama Soondari Dossee v. Radhica Churn*, 4 B. L. R., P. C., 8; 13 W. R., P. C., 11, cited. *ASHANOOOLAH v. KISTO GOBIND DASS*

[2 C. L. R., 592

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.**

275. ———— *Notice, Effect of, as binding plaintiff.—Ground of enhancement.*—A plaintiff must be kept to the grounds of enhancement stated in his notice. **HURRI MOHUN ACHARJEE v. OKHOY KUMAR BOSE** . . . **W. R., 1864, Act X, 14**

And the decision should be on those grounds only. **BHEEM SHIN v. HUR GOBIND** . . . **3 Agra, Rev., 12**

276. ———— *Enhancement in case of tenant-at-will.*—A zemindar is not bound by the ground of enhancement mentioned in his notice in the case of a tenant-at-will. Nor has the tenant any right to claim the prevailing rate, but is liable, after notice of enhancement, to the highest rack-rent. **KOORIE SIRDAR v. GOLUCK CHUNDER CHUCKERBUTTY** . . . **3 W. R., Act X, 196**

MUNEEROODDEEN MEEDHA v. KENNIE
[4 W. R., Act X, 45]

RAMMOHUN CHUCKERBUTTY v. ALLA BUKSH
[4 W. R., Act X, 46]

277. ———— *Proof of rate of rent stated in notice.*—In a suit for rent at an enhanced rate, the landlord is not indispensably bound to prove the very rate which he claims in his notice. **SREENKANT GHOSH v. BHUGWAN CHUNDER SEN**
[24 W. R., 18]

278. ———— *Irregularity in drawing up notice.—Right to declaratory decrees to enhance on service of fresh notice.*—A slight irregularity in the drawing up of a notice of enhancement cannot affect the plaintiff's right to a declaratory order reciting his right to enhance at some future time on service of a fresh notice. **RAM LOCHUN DUTT v. PETUMBER PAUL** . . . **W. R., 1864, Act X, 111**

279. ———— *Notice given during pendency of suit.—Right to decrees declaratory of right to enhance.*—Where a notice of enhancement is served during the pendency of a suit in which the only decree which can be passed is one simply declaratory of the plaintiff's right to recover rent at an enhanced rate, and fixing the rate to which the rent is to be enhanced, the notice is inoperative, and will not enable the Court to give a decree in that suit for the payment of a sum by way of rent from the year subsequent to the service of the notice. **ROMANATH DUTT v. JOY KISHEN MOOKERJEE**
[6 W. R., Act X, 80]

280. ———— *Notice of enhancement as distinct from requisition to tenant to come to terms.—Notice to pay current rate of rent.*—Where a zemindar, after obtaining a decree declaring certain land to be invalid lakhiraj appertaining to his zemindari, serves a notice upon the occupier to pay rent at the rate current in the neighbourhood, such notice does not make the claim one for arrears of rent at an enhanced rate, but is simply a requisition to come to terms. **DEEN DYAL PARAMANICK v. SUTTISH CHUNDER ROY** . . . **15 W. R., 272**

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—continued.**

281. ———— *Joint application for issue of notice of enhancement.—Collection of rent jointly made.*—Where collection is jointly made by the lumberdars, they both ought to join in the application for issue of notice of enhancement. **RAM PERSHAD v. MAHOMED HASHIM** . . . **2 Agra, 249**

(c) SERVICE OF NOTICE.

282. ———— *Person to serve notice.—Act X of 1859, s. 15.*—According to section 15, Act X of 1859, a notice of enhancement must be served by the farmer, and not the zemindar, as the person to whom "the rent is payable," notwithstanding an agreement between the zemindar and the farmer, by which the zemindar reserved to himself the right of serving notices of enhancement. **BINODER LALL GHOSH v. MACKENZIE** . . . **3 W. R., Act X, 157**

DOORGA ROY v. SHYAM JHA . . . **8 W. R., 72**

DOORGA CHURN CHATTERJEE v. GOLUCK CHUNDER BISWAS . . . **23 W. R., 228**

283. ———— *Person to be served.—Personal service.—Substituted service.—Act X of 1859, s. 15.*—According to section 15, Act X of 1859, a notice of enhancement must be served, not upon the under-tenant or ryot or his agent, but personally upon the under-tenant or ryot himself, in or before the month of Choitro. If it cannot be so personally served, it must be affixed at his usual place of residence in the district in which the land is situated; or if he have no such place of residence, at the māl catcherry, &c. **CHUNDER MONER DOSSEE v. DHUBO-NENDHUR LAHOORY** . . . **7 W. R., 2**

284. ———— *Service of notice on wrong parties.*—A suit for arrears of rent at enhanced rates cannot be maintained where the notice of enhancement has been served on parties other than the one known to the zemindar as the actual tenant from whom he had received rents, and to whom he had given receipts, even though the parties served with the notice are the representatives of the registered tenant. **HURO MOHUN MOOKERJEE v. GOLUCK CHUNDER SIKKAR** . . . **12 W. R., 265**

285. ———— *Registered and unregistered tenants.*—When a zemindar has received rent for twenty-two years from the tenant in possession, notwithstanding that he is not registered in his sherista, it is upon such recognised tenant, and not upon any other party, that his notice of enhancement must be served. **NOBO COOMAR GHOSH v. KISHEN CHUNDER BANERJEE** . . . **W. R., 1864, Act X, 112**

286. ———— *Service on husband when wife is tenant.*—Notice of enhancement to a husband is not sufficient when his wife is the acknowledged tenant. **SREENAM GHOSH v. MOLOOK CHAND DEB** . . . **4 W. R., Act X, 3**

287. ———— *Service of defective notice.*—The service of a defective notice of enhancement

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(c) SERVICE OF NOTICE—continued.****Service of defective notice—continued.**

(i.e., one not containing the reasons assigned in section 13 or 17, Act X of 1859) is tantamount to non-service. **RAJKISHEN ROY v. PRANKISHEN ROY** [W. R., 1864, Act X, 89]

288. ——— **Mode of service.—Substituted service.—Avoiding service of notice.**—Where substituted service of notice of enhancement is resorted to under Regulation V of 1812, section 10, the Courts should take care to be first satisfied that the person who ought to be served personally is keeping out of the way. **RAMCHUNDER DUTT v. JOGESH-CHUNDER DUTT**

[12 B. L. R., P. C., 229; 19 W. R., 353]

289. ——— **Notice where there are several defendants.**—Notices of enhancement must be duly served on each defendant before enhanced rent can be decreed. **LYON v. BANESSUR PAUL** 2 Hay, 120

290. ——— **Personal service.**—Where the service of notice of enhancement relied on has not been personal, it will not be valid unless it appear that an attempt has been made to effect personal service on all the defendants. **RASH BEHARY MOOKERJEE v. KHETTRO NATH ROY** [1 C. L. R., 418]

291. ——— **Mode of service.—Substituted service without attempting personal service.**—A notice is not duly served when it is merely fixed on the defendant's residence, without any attempt being made to effect personal service. **BURUDA KANT ROY v. RAY CHURN BURNOSHIL** 24 W. R., 381

292. ——— **Indigo factory.**—**Conspicuous place.**—Act X of 1859, s. 18.—**Informality in notice.**—An indigo factory is a "conspicuous place" within the meaning of section 13, Act X of 1859, where a notice of enhancement may be fixed. A notice of enhancement served under the provisions of section 13, Act X of 1859, is not informal because it does not bear the signature of the landlord or his agent. **HURONATH ROY v. MIRONMOYEE DABEE** . W. R., 1864, Act X, 56

293. ——— **Substituted service.—Proof of intention to avoid service.**—Service of notice upon a defendant, by affixing the same upon the door of his dwelling-house, is not sufficient, unless the condition exists which alone renders substituted service good, namely, that the person upon whom it is sought to effect service is keeping out of the way. **Ram Chunder Dutt v. Jogesh Chunder Dutt**, 12 B. L. R., P. C., 229; 19 W. R., P. C., 353, cited and followed. **RAMA RAI v. SHIDHUR PRESHAD NARAIN SAHAI** 4 C. L. R., 397

294. ——— **Service on joint Hindu family.**—Beng. Act VIII of 1869, s. 14.—Service of notice of enhancement under section 14 of Bengal Act VIII of 1869 must be made strictly in the manner provided by that section.

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(c) SERVICE OF NOTICE—continued.****Mode of service—continued.**

Chunder Monsee Dosses v. Dharoneedhar Lahory, 7 W. R., 2, followed. When a tenure was held by a Hindu and three Santhals, and it was shown that service of the notice of enhancement had been personal on the latter, but only on the son of the former, who was an adult and living with his father as a member of a joint Hindu family,—**Held** that this was not sufficient service on the Hindu tenant. **Quare**,—Whether, if it had been shown that the notice, though served on the son, had come into the hands of the father, that would not amount to a sufficient service of the notice. **BOIDONATH MASHANTA v. LAIDLAY** I. L. R., 10 Calc., 433

295. ——— **Substituted service.**—Beng. Act VIII of 1869, s. 14.—Reg. V of 1812, s. 10.—**Evidence of substituted service.**—**Nature of.—Burden of proof.**—Proof of the validity of substituted service required by section 10, Regulation V of 1812, is stricter than that necessary under the terms of section 14 of Bengal Act VIII of 1869. **Ram Chunder Dutt v. Jogesh Chunder Dutt**, 19 W. R., 353; 12 B. L. R., 229, distinguished. Where the only evidence in support of substituted service was the statement of the serving peon that he had searched for the tenant and could not find him,—**Held**, that such evidence was sufficient, under the terms of section 14 of the Rent Act, to throw the onus upon the defendant to show by cross-examination or otherwise that the search was not properly made. **NOOR ALI MIAN KHONDKAR v. ASHANULLAH** [I. L. R., 11 Calc., 608]

296. ——— **Joint family.**—**Notice shown to have reached, though informally, person intended to be served.**—Beng. Act VIII of 1869, s. 14.—Where there is evidence that a notice under section 14 of Act VIII of 1869 has actually reached the persons for whom it was intended, such notice is valid, although the formalities enjoined by the section have not been strictly complied with. Service of such notice upon two of four joint brothers is good service. **BASSUNT LALL DASS v. PANA ALI** [3 C. L. R., 432]

297. ——— **Joint notice.**—Act X of 1859, s. 19.—A joint notice of enhancement was served upon several ryots, whose jummas were in fact separate, but which for a great many years, in suits and other proceedings, had been mutually treated as joint. **Held** that the ryots ought not to be allowed, in a suit for an excessive demand of rent, to object that they were entitled to separate notices, but that they were entitled to the benefit of some of the holdings being separate for the purpose of surrendering some, and retaining others, of such separate holdings under section 19 of Act X of 1859. **JADUB CHUNDER HALDAR v. ETWARREN LUSHKUR** Marsh., 493; 2 Hay, 569

298. ——— **Joint undivided tenure.—Joint tenure subdivided without sanction.**—In a case of joint tenure not subdivided under any

ENHANCEMENT OF RENT—continued.**4. NOTICE OF ENHANCEMENT—continued.****(c) SERVICE OF NOTICE—continued.****Mode of service—continued.**

sanction from the superior landlord, notice of enhancement need not be served on all persons interested under an alleged subdivision. **MOTHOORANATH CHATTERJEA v. KHETTERNATH BISWAS**

[2 W. R., Act X, 92]

299. ——— Tenure held jointly.—A suit for enhanced rent in respect of a tenure held jointly cannot proceed except on notice to all the joint tenants. **SURNOMOI v. JOHUR MAHOMED NASHYO** . . . 10 C. L. R., 545

300. ——— Joint Hindu family.—*Beng. Act VIII of 1869, s. 14.*—Where a tenure is owned by a joint Hindu family, it is sufficient service of notice of enhancement under section 14, Bengal Act VIII of 1869, if any one of the co-sharers is served with the notice. **NOBODDEP CHUNDER SHAHA v. SONARAM DASS**

[I. L. R., 4 Calc., 592; 3 C. L. R., 359]

301. ——— Co-sharers.—*Beng. Act VIII of 1869, s. 14.*—Where personal service of notice upon a co-sharer, under Bengal Act VIII of 1869, section 14, is found to be impracticable, the notice may be stuck up at the adjoining house of another co-sharer. **MAHOMED ELAHEE BUKSH CHOWDHRY v. BROJO KISHORE SEN**

[24 W. R., 14]

302. ——— Service of notice signed by only one of several shareholders.—*Suit by one of two joint khots for enhanced rent.*—*Notice, Sufficiency of service of.*—In a suit brought by one of two joint khots to recover enhanced rent from a tenant, the notice of enhancement given to the tenant having been signed by the plaintiff alone, and not concurred in by the other joint khot,—*Held*, by the High Court, that the notice was insufficient to render the tenant liable for the increased rent, and that the plaintiff was not entitled to recover. **BALAJI BAIKAJI PINGE v. GOPAL KULI** . . . I. L. R., 3 Bom., 23

303. ——— Service of notice at instance of only some of several shareholders.—*Beng. Act VIII of 1869, s. 14.*—*Per GARTH, C. J., PONTIFEX and MITTER, JJ. (MORRIS and McDONELL, JJ., dissenting).*—A suit for arrears of rent at an enhanced rate brought by all the shareholders will lie, notice under section 14 of Bengal Act VIII of 1869 having been issued at the instance of some of the persons entitled to the rent. **CHUNI SINGH v. HERA MAHTO**

[I. L. R., 7 Calc., 683; 9 C. L. R., 37]

Contra, **KASHEE KISHORE ROY CHOWDHRY v. ALIP MUNDUL**

[I. L. R., 6 Calc., 149; 7 C. L. R., 107]

5. GROUNDS OF ENHANCEMENT.**(a) GENERALLY.**

304. ——— Distinction between ryots with and without rights of occupancy.—*Act X of 1859, s. 17, cl. 1.*—In ascertaining the rates of rent

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(a) GENERALLY—continued.****Distinction between ryots with and without rights of occupancy—continued.**

the Courts should not fail to recognise the important distinction between ryots having a right of occupancy and other ryots, in a case of enhancement under clause 1, section 17, Act X of 1859. **LUCHMUN v. JOGUL KISHORE** . . . 3 Agra, 99

305. ——— Grounds in case of ryot without right of occupancy.—*Act X of 1859, ss. 6 and 17.*—In a suit for enhancement of rent it was held that the provisions of section 6, Act X of 1859, do not apply to the case of a ryot not having a right of occupancy; and in fixing a fair and equitable rate for such a ryot, Courts are not restricted to the grounds laid down in section 17. **PITAMBAR KURMOKAR v. RAMTUNOO ROY** . . . 10 W. R., 123

306. ——— Grounds in case of ryots treated as occupancy ryots.—*Act X of 1859, s. 17.*—Where a landlord treats ryots as having a right of occupancy subject to enhancement under section 17 of Act X of 1859, he must, before he can enhance, show that some of the conditions of section 17, Act X of 1859, exist. **FITZPATRICK v. SETHA ROY**

[1 Ind. Jur., N. S., 170]

307. ——— Grounds for enhancement, Enquiry into.—A claim for enhancement of rent should not be disposed of without determining the propriety of the enhanced rent with reference to the ground on which it is claimed. **HURDYAL OOPADHYA v. MAHOMED NAHEM**

[1 N. W., Part 2, 19; Ed. 1873, 79]

308. ——— Failure to prove one of several grounds.—*Act X of 1859, s. 17.*—There is nothing in section 17, Act X of 1859, which provides that if one of the grounds specified in the notice of enhancement be not proved, there shall be no decree for enhancement on account of any other ground which is proved. **RAM KANT CHUCKERBUTTY v. MOHESH CHUNDER SINGH** . . . 7 W. R., 172

309. ——— Grounds, Procedure as to where notice is bad.—*Power of remand.*—In a suit for enhancement against a ryot having a right of occupancy, if the notice served is found to be bad in law, the Judge has no power under the Procedure Code to remand the case with a view to the ascertainment by local enquiry of the area of the land in dispute and the rates prevailing in its neighbourhood. **PRAN HUREE DOSS v. PARBUTTY CHURN MOJOOMDAR**

[13 W. R., 227]

310. ——— Grounds, Onus of proof of.—*Act X of 1859, s. 17.*—*Question of proper rate of rent.*—In an appeal from a decree for enhancement of rent, where the lower Court found that the defendant had failed to give evidence of non-liability,—*Held*, that it should have enquired whether the rates assessed by the first Court were proper, and such as plaintiff would be entitled to have under section 17, Act X of 1859. **RUNGOMONEY DOSSEE v. CAMPBELL** . . . 12 W. R., 111

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(a) GENERALLY—continued.**

311. ——— Grounds in case of proprietor who has settled with Government.—*Increase in value of produce.*—*Excess land.*—A proprietor who has settled with Government under a jumma bandi cannot sue for enhancement on the mere ground that the rate is below the prevailing rate, but must sue either on the ground of increase in the value of the produce or of an excess quantity of land. *SUKHI MANI HOLDAR v. GUNGA GOBIND MUNDLE* [W. R., 1864, Act X, 126]

312. ——— Grounds in case of intermediate tenures.—*Deduction.*—A deduction of 15 per cent. from the gross rent is a fair and equitable mode of assessing the rent payable by an intermediate tenant in a suit for enhancement. Intermediate tenures should be assessed at a rate so as to allow the tenant a reasonable profit, and not at a rate at which actual cultivators are assessed. *SWARNAMAYI v. GAURI PRASAD DASS* . . . 3 B&L R., A. C., 270

313. ——— Unforeseen catastrophe.—*Inundation.*—The occurrence of a catastrophe such as an inundation, during the year succeeding a notice of enhancement, was held to be sufficient to render the demand of a higher rent unfair and inequitable. *BANASOONDEREE DOSSEE v. KALOO PRADAH* [10 W. R., 395]

(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES, &c.

314. ——— Principle of adjustment of rent.—*Act X of 1859, s. 17.*—Where enhancement of rent is sought on the ground "that the rate of rent payable by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent," the question of enhancement is to be determined by reference to such state of affairs as is provided for by Act X of 1859, section 17, and cannot be decided merely on the ground that, although the value of the land has increased, there has also been an increase in the rate of wages and in the price of provisions consumed by the ryots. *SAVI v. JERTOO MERRAH* . . . Marsh., 186: W. R., F. B., 59 [1 Ind. Jur., O. S., 80: 1 Hay, 451]

315. ——— Mode of calculating rate of rent.—*Act X of 1859, s. 17, cl. 1.*—In a suit under clause 1, section 17, Act X of 1859, to enhance rents, on the ground that the rates are below the prevailing rates payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent, the question whether and to what extent the rents ought to be enhanced is to be determined by a comparison of the rents actually paid by similar adjoining lands, and without reference to the value of the produce. *SREERAM CHATTERJEE v. LUCKHUN MAGILLA* . Marsh., 379: 2 Hay, 427

316. ——— *Act X of 1859, s. 17.*—In enhancing rents on the first of the grounds specified in section 17, Act X of 1859, not only must

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES, &c.—continued.****Mode of calculating rate of rent—continued.**

the amount of rent paid by neighbouring ryots be considered, but also the class of the ryots, and whether the lands in question are similar to the lands held by the neighbouring ryots and enjoying similar advantages. *SHIB NARAIN DUTT v. EKRAMOONISSA BEGUM* . . . 17 W. R., 355

317. ——— Necessity of specific finding as to rate paid by neighbouring ryots.—In a suit for enhancement on the ground that the defendant pays a lower rent than that paid by neighbouring ryots of the same class for similar lands, the Judge, instead of decreeing what he considers a fair rate, should find specifically whether the rate claimed by the plaintiff is actually paid by the neighbouring ryots of the same class for similar lands, or what rate is so paid, and decide accordingly. *PELARAM KOTAL v. NUND COOMAR CHUTTORAM* [6 W. R., Act X, 45]

318. ——— Necessity to enquire into whole of clause as to rate of rent.—With reference to the first ground specified in section 17, Act X of 1859, it is not sufficient to find that the enhanced rent claimed is the same as that in an adjoining village, but it is also necessary to enquire whether that rent is paid by the same class of ryots, or whether the land is of a similar description, or whether it possesses similar advantages. *NOBO-COOMAR BISWAS v. OMAN* . . . 7 W. R., 148

319. ——— Claim to be rated at the "nerikh".—*Rate paid by same class of ryots for similar land.*—In a suit for a kabuliast at an enhanced rate, a claim to the nerikh may be considered to be a claim to the pergunnah rate,—i.e., the rate paid by the same class of ryots for similar land in the neighbourhood. *OMERIT LALL BOSE v. AHBACH CAZI* . . . 4 W. R., Act X, 47

320. ——— Rates of pergunnah.—*Rates of places adjacent.*—Under clause 1, section 17, Act X of 1859, the enhancement of rent is not restricted to the rates of the pergunnah or of the village, but is to be according to the rates prevailing in the places adjacent. *SUDUROONDEEN v. BHETOO PULEH* . . . 5 W. R., Act X, 70

321. ——— Cultivated land originally held on jungle-bori tenure.—In fixing the rent to be paid for cultivated land originally held on a jungle-bori grant, the Court should ascertain the rate payable by the same class of ryots for lands of a similar description and with similar advantages. *DEEN DYAL AGESTEE v. WATSON* [W. R., 1864, Act X, 113]

322. ——— *Act X of 1859, s. 17.*—Where a ryot, who had taken a clearing lease for certain jungles at a rissuddee jumma rising by degrees to 10 annas, which had been reached and had

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES, &c.—continued.**

Cultivated land originally held on jungle-bori tenure—*continued.*

been paid for some time, was sued for enhancement of rent, it was held that the mere fact of the ryot's produce having largely increased in value, and of his rent being materially below that paid for similar lands in the neighbourhood, were not sufficient grounds for enhancement of rent under section 17, Act X of 1859. It is essential to a right to enhance, under clause 1, section 17, that the higher rates in the neighbourhood should be paid by the same class of ryots, and by ryots with similar advantages. **PURMANUND SMIN v. PUDDO MONNE DOSSER**

[9 W. R., 349]

323. ——— Assessment of rent on tanks.—Rent paid to Government.—A zemindar is entitled to as much rent for his tanks as is leviable on tanks in the neighbourhood, without reference to the rent which Government may take from ryots whose tanks it has resumed. **KURRALY CHURN BANERJEE v. MODHOOSOODUN PATTTER**

[3 W. R., Act X, 146]

RAM CHURN BANERJEE v. KISTO DOOGAR

[3 W. R., Act X, 182]

324. ——— "Adjacent," Meaning of.—Act X of 1859, s. 17.—Held that the word "adjacent" cannot so narrowly be construed as to confine the enquiry to places bordering on the land, or even lying very near or close to it. **TAIJA MULL v. OOMRAO**

[1 Agra, Rev., 64]

325. ——— "Places adjacent," Meaning of.—Beng. Act VIII of 1869, ss. 17 and 18.—Rate of rent.—The words "places adjacent" in Bengal Act VIII of 1869, section 18, clause 1, cannot be restricted to lands in contact with that to which the rent suit relates. The general rule may be stated to be that the plaintiff is not on the one hand restricted to a comparison with lands immediately contiguous, and must not, on the other, pick and choose particular places, but should consider the rates prevailing in all the neighbouring places which are similarly circumstanced. The enhancement need not be to some rate which is actually paid. Where different ryots holding similar lands with similar advantages in places adjacent pay at different but higher rates for lands of the same description and quality, and the only question is the extent to which the defendant is liable to enhancement, the clause must not be so construed as to deprive a zemindar of his fair rents; but the Court should be guided by a consideration of what is fair and equitable, as provided by section 5 subject to the limitations prescribed in section 17. If a generally prevailing rate cannot be found, the currency of the different rates being so nearly equal as to make it impossible to say which is the prevailing rate, the Court is not in error in taking an average. **DENA GAZER v. MOHINNE MOHUN DOSS**

[21 W. R., 157]

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES, &c.—continued.**

326. ——— "Average rate" of rent.—Beng. Act VIII of 1869, s. 18.—In trying a question of enhancement upon the first ground mentioned in section 18 of the Rent Law, 1869, it is not allowable to a Court to strike an average on the rates of rent proved before it. **AUDH BEHAREE SINGH v. DOST MAHOMED**

[22 W. R., 185]

327. ——— Abwabs paid by neighbouring ryots.—Act X of 1859, s. 17.—In determining the enhanced rent which a ryot is liable to pay under section 17, Act X of 1859, a Court cannot legally include patwarian and other abwabs paid by ryots in the neighbouring lands. **BURMAH CHOWDHRY v. SREENUND SINGH**

[12 W. R., 29]

328. ——— Prevailing rate for neighbouring lands.—Intention of this portion of clause.—The provision for enhancing rent to the rate prevailing for the same class of lands is exceptional, applying to cases in which, from some exceptional causes, a ryot is holding at an unusually low rate, and is not intended—after the rent has been raised on some ryots in any place for a special reason—to furnish a means for raising the rents of all the ryots of the same place to the same rate. **GLASSCOOTT v. RAJ CHUNDER MOOCHY MURDUL**

[25 W. R., 361]

329. ——— Current rate prevailing in village.—Act X of 1859, s. 17.—In a suit for a kabuli at the rate mentioned on the allegation that that rate was the current rate prevailing in the village, it was held that this assertion may be read as sufficiently indicating that the ground for enhancing the rate was the first ground of section 17. **BRAMA v. MOHUR SINGH**

[2 Agra, Rev., 2]

330. ——— Cultivators of same class in places adjacent.—Calculation of rate.—When application is made for enhancement of rent of a right-of-occupancy cultivator, care should be taken to compare his rent with that paid by cultivators of the same class in places adjacent, even if not in the same mouzah and cultivating under similar advantages in every way. **ISMAIL KHAN v. BRONDOD**

[1 N. W., 26: Ed. 1873, 24]

331. ——— "Same class" of ryots, Meaning of.—"Prevailing rate."—Act X of 1859, s. 17.—The words "same class" in section 17, Act X of 1859, refer to the division of ryots into two classes, viz., those having, and those not having, rights of occupancy. The words "prevailing rate" in section 17 mean the rate generally prevalent, or the rate paid by the majority of the ryots in the neighbourhood. **SHADHOO SINGH v. RAMANOOGRAHA LALL**

[9 W. R., 63]

332. ——— Special class of ryots.—Standard of enhancement.—In the absence of proof of any separate class of ryots within the general body of occupancy ryots, the general body of such ryots must be held to be "the same class of

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES, &C.—continued.**

“Same class” of ryots, Meaning of—*continued.*

ryots” to whose standard a ryot with a right of occupancy may be raised, although some may be more and some less ancient than he. **RAM COOMAR DHARA v. BHOYRUB CHUNDER MOOKERJEE**

[6 W. R., Act X, 33

333. — Ryots holding under same class of landlord.—Ryots are not necessarily ryots of the same class because they hold under a similar class of landlords. **GOVERNATH ROY v. RAMGUTTY CHUNDER**

12 W. R., 102

334. — Same class of ryots.—Cultivators of high and low caste.—Calculation of rates of rent.—It is not incorrect to accept the rates paid by cultivators of low caste, with rights of occupancy for lands of the same description and with similar advantages as a basis for calculating the rates to be paid in future by a cultivator of high caste, but it is necessary to consider and allow for the difference of castes. **KUNUK SINGH v. GHOLAM JEEHANEE**

[2 Agra, 329

335. — Difference of caste among ryots.—Comparison must be made with ryots of the same caste. **BALNEE PERSHAD v. MAHOMED UKBER HOSSEIN**

3 Agra, Rev., 3

BHEEM SINGH v. HUR GOBIND

[3 Agra, Rev., 12

336. — Comparison where no class of ryots of same class.—Allowance for difference of class.—Held that where cultivators of similar stamp were not to be found in the village or its vicinity, plaintiff's rate may be compared with that of another class, making suitable allowance in consideration of the superiority of class attached to him. **KUNOHUN SINGH v. SHORAJ**

[1 Agra, Rev., 7

337. — “Lands of similar description.”—Mode of enhancement of tenure containing different descriptions of land.—Where the holding of a cultivator consists of several descriptions of land, the enhancement should be determined by comparing each description of land with similar adjacent land held by the same class of cultivators, and not by applying indiscriminately the average rates of tenants having a right of occupancy. **MITHO LALL v. SERTA RAM**

1 Agra, Rev., 40

338. — Mode of enhancement.—Adjacent lands.—Where in places adjacent no land of similar description, with similar advantages to the land sought to be enhanced, is found to exist, it is not illegal to decree enhancement at the average of the rates paid for adjacent lands. **NUBER BUKSH v. RAM SUHAI**

1 Agra, Rev., 57

TIKARAM SINGH v. SANDES

22 W. R., 335

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES, &C.—continued.**

339. — Prevailing rates of rent.—

Ascertainment of fair rate of rent.—That the value of produce is said generally to have doubled or trebled is not a sufficient reason for doubling the rate of rent, except where new rates of rent are not to be found. The best mode of ascertaining a fair rate is by finding what rate is paid by similar ryots for similar lands. **AMANULLA v. RAM NIDHEE GHOSE**

[9 W. R., 392

340. — Sufficiency of evidence to prove prevailing rate.—In a suit for enhancement of rent on the ground that the rates at which defendant held were below the prevailing rate paid by the same class of ryots for adjacent lands of a similar description and with similar advantages, the evidence of three patwaris who put in their jumma-bundis showing the rates paid by almost all the ryots,—i.e., the majority,—was held sufficient to prove the prevailing rate. **PRIAG LALL v. BROCKMAN**

[13 W. R., 346

341. — Sufficiency of evidence to prove prevailing rate.—In a suit after notice for a kabulist at enhanced rates, said to be those prevailing in the adjacent villages for similar lands held by the same class of ryots as defendant, the evidence of seven occupant ryots of the neighbourhood, though not a majority, was held to be legally sufficient to make a case which defendant was bound to rebut. **SARROOP MANNA v. BONGOMALAN CHURN MITTAL**

15 W. R., 240

342. — Sufficiency of evidence of prevailing rate.—The mere fact of a particular rate of rent having been decreed against two ryots not having a right of occupancy, is not enough to show that the rate so decreed was the rate prevailing in the neighbourhood. **SURAHUTOONISSA KHATOON v. GYANEE BUKTOOR**

11 W. R., 142

343. — Act X of 1859, ss. 13, 17.—Ryot without right of occupancy.—Occupancy ryots at lower rates.—In a suit for enhancement of rent after notice under section 13, Act X of 1859 (such notice not treating the defendant as a ryot having a right of occupancy), if the defendant claims to be protected from enhancement otherwise than under section 17, it is for him to prove, or at least to allege, that he has a right of occupancy, before an issue can be received under the section last mentioned. If a defendant in such a suit has no right of occupancy, and the Judge considers the rate claimed represents the fair value of the land, he should give the plaintiff a decree, notwithstanding a very large number of ancient ryots having right of occupancy at lower rates. **DUFF v. SOWDAGUE SAHOO JOTEDAR**

[13 W. R., 255

344. — Proof of rate of rent.—Mistake as to area of land.—A suit for enhancement of rent after notice should not be dismissed merely because the landlord has made a mistake as

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES, &c.—continued.****Prevailing rates of rent—continued.**

to the exact area of the lands which his tenants hold. Where enhancement is sued for on the ground that the rent paid by the defendant is below the rate prevailing in the neighbourhood, it is not enough for the plaintiff to show that the adjacent lands are of a similar description to those held by defendant; he must also show that they are held by persons of the same class with the defendant. **WOOMANATH ROY CHOWDHRY v. ASHUMBURR BISWAS**

[12 W. R., 476]

345. ————— *Evidence by hypothetical adjustment of rents.*—In a suit for enhanced rent where the ground relied on is the prevailing rate paid by adjacent occupiers of similar land, such ground cannot be established by the probability or even the certainty that if the rents of the neighbouring occupants were readjusted they would come up to the rate claimed. **BRINDABUN DEY v. BUSONA BIRER**. 13 W. R., 107; 13 B. L. R., 200, note

346. ————— *Failure to prove existence of ground for enhancement.*—Where the ground of enhancement was that defendant paid rent below the prevailing rate for land of similar description and with similar advantages in the places adjacent, and the plaintiff failed to prove the existence of any such ground, the plaintiff was not entitled to a decree at the rates which the defendant's lands would bear, as Act X of 1859 does not authorise enhancement of the rent of a ryot to the rates which the lands will bear. **JAUN ALI v. JAN ALI**

[9 W. R., 149]

347. ————— *Data for calculation of.*—In a suit for enhancement of the rent paid by shikmi talookdars, the plaintiff is bound to afford data (e.g., the rate paid by intermediate tenants of the same class) upon which the Court can come to a satisfactory conclusion as to what would be a fair and equitable rate to be paid by defendant, plaintiff being competent, under section 10, Act VI of 1862, to measure the talook and ascertain the assets. **DAREN DOSS NEOGER CHOWDHRY v. GOBIND MOHUN GHOSH**

10 W. R., 218

348. ————— *Rate paid by neighbouring ryots of same class.*—In a suit for enhancement of rent on the ground that the defendant pays at a lower rate than that paid by the neighbouring ryots of the same class for similar lands, if it be found that the prevailing rate is higher than the rent paid by the defendant, though lower than the rate claimed in the plaint to be the prevailing rate, the Court ought to give a decree at the actual rate found to be paid by the neighbouring ryots. **AKUL GAZA v. AMUNOODDEEN**

5 C. L. R., 41

349. ————— *Beng. Act VIII of 1869, s. 18.—Grounds of enhancement, Proof of.*—In a suit to recover rent at an enhanced rate after notice upon grounds furnished by the first two

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES, &c.—continued.****Prevailing rates of rent—continued.**

clauses of section 18, Bengal Act VIII of 1869, where the defendant pleaded that the land was maurasi, held by him at a fixed rate of rent for generation after generation.—*Held* that the defendant's failure to prove this plea was no bar to his setting up that he had earned the right of occupancy in the land. *Held* that the plaintiff could not succeed without proving the substance of each part of clause 1: and that it was not enough to show that the rate paid by the defendant was below the prevailing rate for adjacent land of a similar description and with similar advantages; but it must also be shown that the prevailing rate was paid by ryots of the same class as the defendant. **DOMA ROY v. MELON**. 20 W. R., 416

(c) INCREASE IN VALUE OF LAND, &c.

350. ————— *Valuation of produce.—Proportion, Principle of.—Act X of 1859, ss. 13 and 17.—Apportionment of increased value.*—In a suit for enhancement of rent, on the ground specified in section 17 of Act X of 1859, that "the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot," the amount of the increased rent is not to be ascertained by establishing a proportion between the former rent and the old produce; but the absolute increased value of the produce being ascertained, the enhanced rent is to be arrived at by considering what part of such increased value ought to be apportioned to the tenant as the produce of his capital and labour, and what part of it is rent, that is, as it has been defined, "that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to the cultivation of whatever kind have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being." Rent cannot be enhanced beyond the rate demanded in the plaint, and it can be enhanced only in respect of such part of the land as has increased in value. **HILLS v. ISHORE GHOSH**

[Marsh., 151: 1 Hay, 350]

ISHORE GHOSH v. HILLS

[W. R., F. R., 48: 1 Ind. Jur., O. S., 25]

351. ————— *Wages of ryots.—Fair and equitable rent.—Loss for crops destroyed.*—The produce of a bigah of dhan in 1267 and 1268 should not be valued at the prices of 1269. Whether a ryot borrows his food or not, he cannot receive his wages out of the proceeds of crops before the crops are gathered. An allowance for a house cannot be made to a ryot in addition to a fair allowance for wages. Loss on account of crops destroyed or injured cannot be taken into consideration twice over: (1st) in ascertaining the average of the quantities and prices, and (2nd) in making an allowance for risks based upon injuries done to the crops, of which the quantities and prices must have been taken

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Valuation of produce—continued.**

into consideration in calculating the average. A landlord cannot be charged with a rate of interest or profit on capital far beyond the ordinary rate of interest or profit, and also with an allowance for ensuring the return of the capital with such extraordinary rate of interest. One rate of rent cannot be fixed for a ryot who spends his own capital, and another for a ryot who is compelled to borrow it. The rate of rent which the landlord has a right by law to demand does not depend upon the size of the holding or the circumstances of the ryot. What is a fair and equitable rent for one ryot for lands of a similar description and with similar advantages in the same neighbourhood must also be fair and equitable for another, so far as the landlord is concerned. A ryot who, but for the Permanent Settlement, would have been entitled to no more than half of the gross proceeds of his land, is not over-assessed when he is allowed to retain at least five sixths of the gross proceeds for his labour and profit on capital, and called upon to pay something less than the other one sixth as rent to the zemindar. *HILLS v. ISHORE GHOSH*

[W. R., F. B., 131]

Held in the same case on review.—The condition and rights of ryots, whose tenures have commenced since the Permanent Settlement, depend not on status, but on contract and on laws and regulations specially enacted. In 1798 the zemindars were declared to be the proprietors of the lands. From 1798 to 1812 they were prevented from granting pottahs or leases to ryots for more than ten years, and could not therefore have created ryots with hereditary rights of property in the soil. After Regulation V of 1812, they could grant leases at any rate and for any term. By the retrospective effect of section 2, Regulation VIII of 1819, leases in perpetuity or for terms granted prior to 1812 were rendered valid. In this case it was admitted that the value of the produce had increased otherwise than by the agency or at the expense of the ryot, and that the notice required by section 13, Act X of 1859, had been served before the end of Chaitro in the year preceding that for which enhancement was claimed. Upon being served with that notice the defendant had a right to quit according to section 19. The Statute of Limitation does not give him a right of occupancy under section 6 by holding for twelve years. But for Act X of 1859, therefore, the defendant (assuming that he was not holding for a fixed term, and that his tenancy commenced since the Permanent Settlement) would have been liable to have his tenancy determined, and to be turned out of possession at the end of 1267, if he and his landlord could not agree as to the rent to be paid for the future. But it being admitted that he had a right of occupancy under Act X of 1859, he was entitled to hold at a fair and equitable rate. What is fair and equitable depends on the value of the produce and cost of production. After the Permanent Settlement, and before Act X of 1859, a right of occupancy was not acquired by a ryot

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Valuation of produce—continued.**

merely by holding or cultivating land for a period of twelve years. When that Act created the right, section 5 declared that ryots having rights of occupancy should be entitled to hold at fair and equitable rates, thus leaving it to the Court to determine in every case of dispute what is a fair and equitable rate. To be fair and equitable it must be so as regards both parties. *ISHORE GHOSH v. HILLS*

[W. R., F. B., 148]

352. ————— *Act X of 1859, ss. 5, 6, and 13.—Adjustment, Mode of.—Proportion, Rule of.*—When there has been an increase in the value of the produce of land arising from an increase in prices, and the zemindar is entitled to a new kabuliat from an occupancy ryot, at an enhanced rate, at fair and equitable rates,—*Held, per TREVOR, J.* (concurrent in by the majority of the Court).—The words “fair and equitable,” in section 5, Act X of 1859, are to be construed as equivalent to the varying expressions, “pergunnah rates,” “rates paid for similar lands in the adjacent places,” and “rates fixed by the law and usage of the country,”—all which expressions indicate that portion of the gross produce calculated in money to which the zemindar is entitled under the custom of the country; that as the Legislature directs that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown, that rent is to be presumed, in all cases in which the presumption is not by the nature and express terms of the written contract rebutted, to be the customary rate included in the terms “pergunnah rates,” “rates payable for similar lands in the places adjacent,” and “rates fixed by the law of the country;” that in all cases in which the above presumption arises, and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce caused simply by a rise in price, this method of proportion should be adopted—the former rent should bear to the enhanced rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value, bears to its present value; that in all cases in which the above presumption is rebutted by the nature and express terms of the written contract, the readjustment should be formed on exactly the same principle as that on which the original written contract, which is sought to be superseded, was based; and that in cases in which it appears, from the express terms of the contract, that the rents then made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the ryot to cultivate indigo or other crops, the former rent must be corrected so as to represent the ordinary rate current at the period of the contract, before it can be admitted to form a term in the calculation to be made according to the method of proportion above laid down. *Per MACPHERSON, J.*—The rule of proportion,—as the old value of produce is to the old rent, so is the

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Valuation of produce—continued.**

present value of produce to the rent which ought now to be paid,—is the rule which should be adopted in the absence of any recently-adjusted pergunnah customary rates. Either party should be at liberty, in each case, to prove any special circumstances tending to show that the application of the rule of proportion to that particular case would work injustice. *Per PHEAR, J.*—When the Collector is called upon in any given case to determine the rent which it is fair and equitable that the ryot should pay, he ought to enquire: *1st*—Whether at the last antecedent period, when the arrangement between the parties (either then created or previously existing) was such as must, by reason of tacit acquiescence or otherwise, be taken to have been fair and equitable, that arrangement contained express stipulations as to rent; if so, then these stipulations, unless the reason for them is gone, should be followed in arriving at the rent for the new pottah. *2nd*—If the Collector finds no express agreement to guide him, then he must ascertain whether the ryot is legally entitled by custom, based either on his personal status or on the character of the land occupied by him, to any definite share of the produce of the land, or to any beneficial interest in it. If the ryot is so entitled, the rent must be adjusted accordingly. *3rd*—If neither express agreement nor legal right in the ryot be found to have determined the amount of rent, the last arrangement must have been governed by some locally prevailing custom, or the rent regulated, tacitly, according to some locally prevailing rates; and in that case the custom ought to be complied with, and the rates adhered to. The fair presumption will be, in the absence of evidence, or unless a different foundation be actually shown, that the rate was originally based upon the principle of sharing the produce of the land between the ryot and zemindar in a fixed ratio. The result of applying this presumption would be that the new fair and equitable rent would be the same proportionate part of the new produce that the old rent was of the old produce. In all cases, the duration of the intended pottah must be taken into consideration as an element affecting the question of fairness and equity. *Per NORMAN, J.*—(1) With respect to the rents of ryots having mere rights of occupancy, a zemindar is entitled to claim from his ryots such rents as are paid by the same class of ryots for land of a similar description and with similar advantages in places adjacent. (2) If such rents are too low, and the zemindar simply allege that the value of the produce has become increased, otherwise than by the agency, or at the expense, of the ryot, he shows an increase in the value of that which primarily belongs to the producer, to a proportion of which alone the zemindar is entitled. It is only necessary to give the zemindar an amount of rent which shall bear the same proportion to the old rent which the present price of the produce does to the former. It must be taken that the old rent was fair and equitable. It is for the zemindar to prove his case, and he must carry back his evidence, as nearly as he can,

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Valuation of produce—continued.**

to the time when the rent was fixed. (3) If the rent consists partly of money, and partly of services, or something equivalent to services, as an obligation to cultivate and supply indigo at a certain price, the value of such contract would have to be estimated and added to the old rent; and in such cases the aggregate value would form a term in the proportion. (4) If a ryot is holding below the rates paid by his neighbours, and in consequence of the increase of the value of the produce these rates are themselves too low, the zemindar may be entitled to the benefit of both grounds of enhancement in the same suit. (5) The cost of cultivation, in the absence of evidence to the contrary, may be taken roughly to have increased in a ratio proportionate to that of the increased price of produce. But in exceptional cases it may be found that the particular crop for which the land is specially fitted, as cotton, or crops on land in the vicinity of a town, has greatly increased in value without any general equivalent rise in the price of labour or the cost of food. In such cases, if the zemindar is not in a position to make out a case under the first clause, the increased profit may be divided between the zemindar and the tenant, as may appear reasonable under the special circumstances of the case; and in like manner any extraordinary increase in the cost of production may be proved by the ryot in answer to the claim for enhancement on the ground of the enhanced price of produce. (6) If the productive powers have increased from other causes, as in the case of lands protected from flooding by the embankments of the railway, without increase of outlay or labour by the tenant, the whole of such increase belongs to the zemindar, subject to any increased expenses which may be caused to the tenant by the collection or realisation of the larger profit. *Per PHA-COCK, C. J.* (dissenting).—The rule of proportion is not applicable. The rule laid down in *Ishore Ghose v. Hills, W. R., F. B., 181, 148*, should be followed. The definition of “rent” by Malthus in his “Principles of Political Economy” is the guide. Rent is “that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation of whatever kind have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being.” In considering whether the whole of the increased value of the produce is to be added to the rent, the Court must be guided by all the circumstances of the case. It may take the old rent as a fair and equitable rent with reference to the former value of the produce. It must take into consideration the circumstances under which the value of the produce has increased, and whether these circumstances are likely to continue. It must also consider whether the costs of production, including fair and reasonable wages for labour, and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased; and if so, it must make a fair allowance on that account. It is only the net increase, or such part of the net increase

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Valuation of produce—continued.**

as will render the rent fair and equitable, that can be added to it. **THAKOORANEN DOSSEE v. BISHESHUR MOOKERJEE** . . . **B. L. R., Sup. Vol., 202 [3 W. R., Act X, 29]**

353. ——— *Cost of production.—Calculation of rate of enhancement.*—In ascertaining the rate of enhancement the Court is not bound to calculate the exact value of the produce and the cost of production, but to estimate the average productive value and cost of production. **HURO MOHUN MOOKERJEE v. THAKOOR DOSS MUNDUL** . . . **[1 W. R., 112]**

354. ——— *Calculation of increase in produce.—Proportion.*—The mode of calculating the increase in the value of produce according to the rule of proportion is by simply taking the former and present value of produce, and not by calculating former and present profits after deducting costs. **RAM TARUCK GHOSH v. BISHESHUR BANERJEE** . . . **[6 W. R., Act X, 32]**

355. ——— *Rule of proportion.—Decrease in productive power and value of produce.*—In a suit for enhancement, where not only the value of the produce has decreased, but the productive powers of the land have decreased, and the expenses of cultivation increased, the formula to be applied in determining the rent will be as follows: The average value of the produce before the decrease in the productive powers of the land will be to the average value of the present decreased produce, *minus* the increased cost of production, as the rent previously paid will be to that which the land ought now to pay. **SHOWDAMINER DOSSEE v. SHOOKOOL MAHOMED** . . . **7 W. R., 94**

356. ——— *Rule of proportion.*—In a suit for enhancement of rent where the expenditure is stationary, and the value of the produce has increased, the proper rule is that the rate of rent to be paid shall bear to the old rate the same proportion as the present value of the produce bears to the old value. **DOORGANATH SHAH v. KAKIM FAKIR** . . . **9 W. R., 348**

SHIB NARAIN GHOSH v. KASHEN PERSHAD MOOKERJEE . . . **1 W. R., 226**

357. ——— *Rule of proportion.—Deduction for costs of production.—Average values for series of years.*—In applying the rule of proportion laid down in the Full Bench decision in the case of *Thakooranes Dossee*, **B. L. R., Sup. Vol., 202: 3 W. R., Act X, 29**, the Judge must consider the amount the ryots actually paid and not what they ought to have paid. The ryot is not entitled to any deduction on account of cost of production. It is necessary to take the average values of the produce of a series of years, including the years of abnormal plenty and scarcity. **JOMBUT MUNDUL v. SHOORENDER NATH ROY** . . . **[25 W. R., 391]**

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Valuation of produce—continued.**

358. ——— *Accidental or exceptional increase in value.—Drought or scarcity.*—The increase in the "value of the produce" which is to form a ground for enhancement of rent under section 17 of Act X of 1859, means an increase in its natural and usual value in ordinary years. The accidental and exceptional high prices of a particular year, in consequence of drought and scarcity, cannot be treated as a measure by which rent is to be adjusted. A tenant takes land, not with reference to the exceptional high prices of a past year, but with reference to the prices he may reasonably expect to realise for the crops which he will raise in succeeding years. **BHAGRUTH DOSS v. MAHASOOF ROY** . . . **[6 W. R., Act X, 34]**

359. ——— *Casual increase in fertility.*—A casual increase in the fertility of the land is not a ground for permanent enhancement of rent. **KRISTO MOHUN PATTUR v. HUREN SUNKUR MOOKERJEE** . . . **7 W. R., 235**

360. ——— *Casual increase in fertility.*—In coming to a conclusion as to whether the produce or the productive powers of the land have increased otherwise than by the agency or at the expense of the ryot, the average of four or five years ought to be taken; the increase of an exceptional year should not be the guide. **RAJKRISHNA MOOKERJEE v. KALNE CHARAN DOBAIN** . . . **[6 B. L. R., Ap., 122: 15 W. R., 109]**

361. ——— *Casual increase in fertility.*—In deciding a suit for a kabuliat at enhanced rate for five years, the probable result of an exceptional bad season should not be taken into consideration, but the average of the past five years. **SHERESH CHUNDER DOSS v. ASSIMONISSA** . . . **[7 W. R., 234]**

362. ——— *Steady and normal increase.*—The increase must be permanent, i.e., steady and normal. **THAKOORANEN DOSSEE v. BISHESHUR MOOKERJEE** . . . **[3 W. R., Act X, 142]**

363. ——— *Inconsistent grounds of enhancement.—Increase of produce and value of produce.—Lowness of rent compared with neighbouring rates.*—Claims to enhancement on the basis of increased produce and increased value of produce are inconsistent and incompatible with one founded on an inequality between the rent paid by a tenant on the estate and paid by a tenant on a neighbouring estate. **SHERESH CHUNDER DOSS v. ASSIMONISSA** . . . **[7 W. R., 234]**

364. ——— *Increase of produce.—Increase of value of produce.*—A claim to enhancement of rent on the basis of increased produce, and one on that of increased value of produce, are not inconsistent and incompatible; and if they were so they would not, by being advanced together, cancel each other, and thus neutralise plain-

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Inconsistent grounds of enhancement—continued.**

tiff's claim to the benefit of clause 2, section 17, Act X of 1859. **GOPHENATH MOOKERJEE v. RAM HUREE MUNDUL.** **9 W. R., 476**

365. ——— **Rule of proportion.—Rates of present and former value unascertainable.**—The rule of proportion is not applicable where the rates between the present value of the produce of the soil and the former value at the time of the original taking cannot be ascertained, and where it is only necessary to see what is a fair and equitable rate by comparison with the rate paid by the neighbouring ryots for similar land. **JADUB CHUNDER HOLLDAE v. ETEBURY LUSHKUR.** **3 W. R., Act X, 160**

366. ——— **Calculation where adjustment has taken place.**—In a suit for a kabuliat at enhanced rents, if the rents of the adjacent lands have been already adjusted and enhanced, the enhancement of the defendant's holding will depend on the rates paid by those adjacent lands, supposing them to be of the same kind, and not on any doctrine of proportion which will only apply when no adjustment has taken place. **AZIM MULLICK v. GUNGA DHUR BANERJEE** **[5 W. R., Act X, 58]**

367. ——— **Rate for lands allotted on batwarra.—Reg. XIX of 1793, s. 19.**—In a suit for khas possession of land made over to plaintiff on batwarra the defendant pleaded twelve years' adverse possession, and that he was entitled to retain possession on payment of rent, as the lands were occupied by gardens made by his ancestor. *Held* that the rate given in the batwarra papers was not necessarily the fair rate for the lands; for under section 19, Regulation XIX of 1793, the gross produce of each village is calculated with the proportion of the public jumma assessed thereon. **LULEET NARAIN SINGH v. GOPAL SINGH.** **9 W. R., 145**

368. ——— **Increase in productive powers.—Increase in rent.**—By the words "increase of productive powers" in section 17, Act X of 1859, the Legislature did not mean capacity for realising a higher rent for building or other purposes, but an increase of the productive powers of the land itself. **BISSESHUR CHUCKERBUTTY v. WOONACHURN ROY.** **9 W. R., 122**

369. ——— **Agency operative at time of notice.—Beng. Act VIII of 1869, s. 18.**—In a suit for arrears of rent for two years of which the rate claimed for one year 1278 was the old rate, and the rate claimed for 1279 was an enhanced rate after notice,—*Held* that, as the suit was from the beginning essentially a suit to recover arrears of rent due in respect of the years 1278 and 1279, and the question whether the plaintiff had made out a right to be paid rent at an enhanced rate for 1279 was only part of the larger question what was the rate at which rent was due for that year, there

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Increase in productive powers—continued.**

was no error in the lower Appellate Court's decreeing arrears of rent for 1279 at the rate which was found to be the true rate, although less than the enhanced rate claimed. *Held* that the increase of productive power alluded to in section 18 of the Rent Law as a ground of enhancement, must be an agency subsisting and operative at the time when the notice is issued. **BROJONATH TEWARI v. GRANT** **[23 W. R., 13]**

370. ——— **Beng. Act VIII of 1869, s. 18.—Increase by natural agency.**—An increase, either permanent or likely to last for a considerable time, caused by natural agency in the productive powers of the land, is one of the elements to be taken into consideration in determining its increased value within the meaning of Bengal Act VIII of 1869, section 18. **ABDOOL GUNEE v. BHUTTOO SHEIKH.** **22 W. R., 350**

371. ——— **Rise in value owing to portion of town being swept away.**—A rise in the value of the lands, owing to a considerable portion of the town in which the lands are situated having been swept away by a river, is not such an increase in the productive powers of the land as is contemplated by clause 17 of section 17 of Act X. **KHONDEAR ABDOOR RUHMAN v. WOONACHURN ROY.** **8 W. R., 380**

372. ——— **Land improved otherwise than by cultivator.**—*Held* that though the land may have been improved otherwise than by the exertions of the cultivator, yet the zemindar is not entitled to demand rent beyond what is fair and equitable for the same class of cultivators as the cultivator sought to be enhanced to pay for such improved lands. **JUMNA PERSHAD v. BHOWANEE** **[2 Agra, Rev., 1]**

373. ——— **Act X of 1859, s. 17.—Embankment, Construction of.**—An increase in the productive power of the land, occasioned by an embankment, constructed at the expense of Government, for excluding the sea from flooding the land, is a ground of enhancement, under section 17 of Act X of 1859. **JADUB CHUNDER HALDAR v. ETWARRIE LUSHKUR.** **Marsh., 498: 2 Hay, 590**

374. ——— **Canal, Construction of.—Expenses of making ducts and for canal rates.**—A cultivator cannot claim altogether to be exempted from enhancement on account of the increase in the productive power of land which has been affected by a canal which was not made at his expense or labour, but he can fairly ask that the expenses, such as the cost of making ducts and the payment of canal rates, should be calculated and deducted from the total amount of increased value. **PIKAN v. RAM BUKSH.** **2 Agra, 346**

375. ——— **Canal, Construction of.—Expenses for canal dues.**—*Held* that a ryot is entitled to deduction of the actual amount

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Increase in productive powers—continued.**

paid by him in the shape of canal dues, and also other expenses which are occasioned by bringing the water into the land, together with interest on the capital employed in such expenses and payment of canal dues. **MAHEPUT SINGH v. LOK INDER SINGH**. **2 Agra, 179**

376. ——— Middleman.—

A middleman is liable to enhancement when the productive powers of his land have been increased otherwise than by the agency or expense of the ryot. Two thirds was held to be a fair proportion of the surplus profits of the land to be awarded to the landlord. **JADUB CHUNDER HALDAR v. ISHOREE LUSHKUR** [W. R., 1864, Act X, 74]

377. ——— Fair and equitable rate.—Act X of 1859, s. 17.—Section 17 does not say that in every case the rate of rent may be raised to the prevailing rate, but only that the rent shall not be raised except on some one of the grounds specified. That section must always be read with reference to the general provision of section 5, that the rent of a ryot having a right of occupancy shall not be more than is fair and equitable; and in considering what is fair and equitable, the ryot should not be called upon to pay to the landlord, under the name of rent, what is in fact not rent but the produce of his own labour and capital sunk in the land. **NOOR MAHOMED MURDUL v. HURELFROSONNO ROY** [W. R., 1864, Act X, 75]

378. ——— Grounds of exemption.—Increase in value from natural causes.—In a suit for enhancement of rent, bare proof that the productive powers of the land in suit have been increased by the agency, or at the expense of the defendant or his ancestor, is not sufficient to exempt the defendant altogether from enhancement. In such a case, where the value of similar lands in the same locality, but not sharing the especial advantages resulting from works or improvements erected or effected, by or at the expense of the defendant or his ancestor, has been increased by natural causes, it must be assumed that the lands of the defendant owe their increased value to that extent to natural causes, and are to that extent liable to enhancement. **TEKAIT CHOORAMUN SINGH v. DUNRAJ ROY** [I. L. R., 5 Cal., 56]

379. ——— Act X of 1859, s. 17.—Increase at expense of tenant.—Where it is found that the productive powers of a holding have been increased at the expense of the tenant, and it is not found that they have increased otherwise, no grounds of enhancement under section 17 of Act X of 1859 are shown. **OUNDA v. RAHEEM SHEER KHAN** [3 N. W., 136]

380. ——— Increase at expense of ryot.—If the tenant's expenditure has caused an increase in the productive power of the land, such

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Increase in productive powers—continued.**

expenditure once made cannot permanently bar enhancement of rent, but after the lapse of such a time as may be fairly estimated as sufficient to enable him to recover his outlay and a just share of profit in respect of it, his rent may be enhanced on any legal ground. **MUJLIS v. MOHER**. **3 Agra, 223**

381. ——— Increase in value of land by tenant's means.—In a suit for enhancement of rent of land originally leased for the purposes of a homestead, where defendant had erected shops, and made other improvements at a great outlay and considerable risk, as the river had encroached and was encroaching, a Judge was held not to have done wrong in allowing the tenant a reduction on account of the increase of value of the land induced by his energy. **NUFFER CHUNDER SHAH v. GUNGA DUTT BHARUTTY**. **11 W. R., 190**

382. ——— Right to enhance rent where increased facilities for irrigation are provided by landlord.—Where a landlord provides facilities for irrigation, of which the tenants may without expense avail themselves, bringing the water to their holdings, *Quære*,—Whether after proper notice he would not be allowed to enhance the rent. A tenant of unirrigated land, if the landlord make that land irrigable without cost to the tenant, must pay at the rates paid by other similar tenants for irrigable lands in the neighbourhood. **IKRAM ALI v. BABOO LALL**. **1 N. W., 178; Ed. 1873, 257**

383. ——— Right to increased rent where ryot digs wells and does not use the irrigation already existing though sufficient.—*Semble*,—If a zemindar has, before the construction of a well by a tenant, provided sufficient means of irrigation, he will be entitled to receive rent at the rate payable by the cultivators of the same class as his tenant for land with the like facilities for irrigation in places adjacent, and will not be deprived of the right to claim rent at irrigated rates because the cultivator does not choose to avail himself of the irrigation provided for him, or thinks fit to make an outlay on the construction of a well which will not materially increase the productive powers of a holding to a greater extent than they would have been increased had the cultivator availed himself of the means of irrigation placed at his disposal by the zemindar. **SHEO CHURN v. BUSSUNT SINGH. RAMJUTHUN SINGH v. MEHDIE** [3 N. W., 282; Agra, F. B., Ed. 1874, 256]

384. ——— Improvements by agency of tenants.—The fact that at a distant time the ryot or his ancestors have by their own agency or at their own expense made wells or effected improvements, is not a legal bar to the landlord's right to enhance. **LALLA SHEO NARAIN v. OODHUN SINGH** [1 N. W., 180; Ed. 1873, 258]

385. ——— Reclamation of waste land by tenant.—In a suit to enhance rents the Deputy Collector found that the annual revenue ob-

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(c) INCREASE IN VALUE OF LAND, &c.—continued.****Increase in productive powers—continued.**

tained by the ryots was R12,579, and that an increase in such rates was partly due to the exertion of the defendant in reclaiming some waste land, and he deducted R2,579 as the defendant's share, and awarded R10,000 as a fair and reasonable rate to be paid to the plaintiff. *Held* that there was no reason for impeaching his award of this rate. **SURENO MOYE v. ADOTTO CHURN ROY** . . . **Marsh., 605**

386. ——— *Expenditure of labour and capital by tenant.*—Where tenants held for some twenty-five years upon a rent apparently much below that payable for lands of the same description in the neighbourhood, they were held not entitled at the end of that long period to allege the expenditure of their own capital and labour against the landlord's claim to a kabuliat at an enhanced rate. **PROSONO COOMAR PAUL CHOWDHREY v. RADHA NATH DEY CHOWDHREY** . . . **7 W. R., 97**

387. ——— *Increase by exertion of tenants.*—In a suit for enhancement of rent upon the ground that the rates were below the prevailing rates payable by the same class of ryots for land of a similar description and with similar advantages in places adjacent, the Judge exempted from any enhancement a tank and garden, on the ground that the tank had been dry for public use, and that the garden had been rendered productive by the exertion of the tenants. *Held* that neither reason was any ground of exemption from enhancement. **SREEN- RAM CHATTERJEE v. LACKHUN MAGILLA** [**Marsh., 379; 2 Hay, 427**]

388. ——— *Care and labour expended by ryot.*—In a suit for a kabuliat at an enhanced rent, where, in spite of the shortness or deficiency of the crops, their value, owing to the additional care and labour expended by the ryot, had increased considerably above that in former years, it was laid down that the Court must try and discover what the ryot was entitled to as a set-off against the increased value of the produce for the additional care and labour expended by him, and whether or not the zemindar was not entitled to some portion of the increased value of the produce in the shape of enhanced rent. **SHODAMINEE DOSSEE v. HARAN CHUNDER SURMA** [**6 W. R., Act X, 103**]

389. ——— *Increase by agency of tenant.*—*Beng. Act VIII of 1869, s. 18.*—In a suit for enhancement of rent, defendant pleaded that the land was used solely for fruit trees, and that those trees were originally planted by the defendant; that consequently any increase in the value and productiveness of the land in consequence of the growth of the trees must be attributable to the agency of the defendant, and therefore by section 18 of Bengal Act VIII of 1869 such increase would be no ground for enhancement.—*Held* a bad defence. **OBHOY CHUNDER SIRDAR v. RADHA BUL- LUBE SEN** . . . **1 C. L. R., 549**

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(d) LANDS HELD IN EXCESS OF TENURE.**

390. ——— *Excess lands.*—*Act X of 1859, s. 17, cl. 3.*—Lands in excess of the area recorded in a mokurrari pottah containing no boundaries are liable to assessment under section 17, Act X of 1859. **BIPRO DOSS DEY v. SAKERMONEE DOSSEE** [**W. R., 1864, Act X, 33**]

391. ——— *Act X of 1859, s. 17, cl. 3.*—Where a tenant is found to be holding a greater quantity of land than that for which rent has been paid by him, and the excess land lies within the land originally leased to him, the landlord is entitled to enhanced rent under clause 3, section 17, Act X of 1859. **GOPERNATH MOOKERJEE v. RAM HUREN MUNDUL** . . . **9 W. R., 476**

392. ——— *Act X of 1859, s. 17, cl. 3.*—In a suit for enhancement under clause 3, section 17, Act X of 1859, on the ground that defendants held lands in excess of that originally granted to him, the mere fact that defendant held for twenty years at an unvarying rent does not excuse him from payment of rent on any land in excess of his jote, unless under special circumstances. **RA- AZOONISSA v. DAD ALI** . . . **8 W. R., 326**

393. ——— *Act X of 1859, s. 17, cl. 3.*—In order to maintain a suit for enhancement on the ground mentioned in clause 3, section 17, Act X of 1859, it is necessary to prove the existence of the alleged excess and the rate at which such excess land ought to be assessed. **NURO KISHORE MUNDLE v. FUKER PARAMANICK** [**17 W. R., 558**]

394. ——— *Expenses of Cultivating excess lands.*—Where a tenant holds excess lands for which no rent has hitherto been paid, the zemindar may treat him either as a trespasser or a tenant. In the latter case a suit will not lie for enhancement, but only for a kabuliat and for a determination of the rate at which the same should be delivered. See *Rajmohun Mitter v. Gooroo Churn Ayoh*, **6 W. R., Act X, 106**. A ryot is entitled to no deduction under section 17, Act X of 1859, for the expenses which he has incurred in cultivating excess lands for which he has paid no rent. He is a mere squatter, and that section refers only to tenants with a right of occupancy. **DAVID v. RAM DRUN CHAT- TERJEE** **6 W. R., Act X, 97**

395. ——— *Rent of ac- creted land.*—*Reg. XI of 1825, s. 4.*—*Evidence that land has been subject of permanent settlement.*—Where the area of a tenure is increased by alluvion, the proper remedy of the landlord is not to sue for enhancement of the rent under the Rent Laws, but, under section 4 of Regulation XI of 1825, to sue for an additional rent for the alluviated lands. Such additional rent cannot be considered as forming part of the rent of the original tenure. In a suit for enhancement it is not necessary to show that the land, the rent of which it is sought to enhance, has been the subject of permanent settlement. In such

ENHANCEMENT OF RENT—continued.**5. GROUNDS OF ENHANCEMENT—continued.****(d) LANDS HELD IN EXCESS OF TENURE—continued.****Excess lands—continued.**

a suit the Government, as against the ryots, is in no better position under the Rent Laws than other landlords. *Sudanando Mytee v. Nowrutton Mytee*, 8 B. L. R., 280: 16 W. R., 289, followed. *GOPI MOHUN MUZOOMDAR v. HILLS*. 5 C. L. R., 33

396. ———— Accretion.—Engagements of parties.—In a suit for enhancement in respect of an accretion the plaintiff is not bound to show any established talookdari rates, but, if entitled to enhance, ought to obtain a decree for enhancement at a rate proportionate to that paid for the parent tenure. In the case of accretions to recently-created tenures the question of enhancement will mainly depend on the engagements of the parties. *GOPAL LALL THAKOOR v. KUMAR ALI* [6 W. R., Act X, 85

397. ———— Accretion to original tenure.—Ground of enhancement.—Beng. Act VIII of 1869, s. 14 and s. 18, cl. 3.—A suit for an enhanced rent brought against a tenant on the ground that the tenure has been increased by accretion must be after service of notice required by section 14 of the Rent Act, the ground for enhancement in such case being substantially within the grounds of enhancement contained in clause 3 of section 18 of that Act. See *Ram Nidhee Manghee v. Parbutty Dassce*, I. L. R., 5 Calc., 828. *HURRO SUNDERI DOSSEE v. GOPIN SUNDERI DOSSEE* [10 C. L. R., 559

398. ———— Accretion.—Notice to pay higher rent or give up possession.—Where a kabuliast stipulated that on the accretion to a certain bowls of any new cultivable chur, a fresh measurement should be made of the chur and howls, and that excess rent should be paid for the excess land at a stipulated rate up to five drones, and at pergunnah rates for the residue; in default thereof rent to be realised according to law, or service made on the tenants of a notice "requiring them to take a settlement of the excess land, and to file a kabullat and fixing the time at fifteen days," otherwise the excess land to be settled with others, the kabuliast measured the howls and accreted chur without notice to the tenants and in their absence, then served on the tenants a notice thereof, and of the increased rent demanded, requiring them to appear within fifteen days and file a kabullat for the said amount of land and rent, or that he would take khas possession. In a suit, amongst other things, for assessment of rent of the excess land,—*Held*, (1) that section 14 of Bengal Act VIII of 1869 did not apply: (2) that the kabuliast was entitled to a decree fixing the extent of the excess land, and assessing the rent payable for it; and was thereafter entitled to issue a fresh notice to the tenants to come to a settlement in respect thereof, or to give up possession. *RAM COOMAR GHOSH v. KALI KRISHNA TAGORE* [L. R., 13 I. A., 116: I. L. R., 14 Calc., 99

ENHANCEMENT OF RENT—continued.**6. DECREASE IN QUANTITY OF LAND.**

399. ———— Decrease in quantity of culturable land.—Deduction of rent in suit for enhancement.—In a suit by the mother of the then zemindar of a talook for enhancement of rent, a decree was made in 1821 in terms of a compromise, enhancing the rent from Rs. 1,800 to Rs. 2,000. A subsequent suit, in which rent was claimed at Rs. 2,200, was finally decided in 1862, the compromise being thereby set aside and the liability of the talook to enhancement finally established. The Ameen's report, which fixed the rent payable at Rs. 124, was not, however, made until 1869. In a suit to recover rent at Rs. 124 for the year 1871-72, the Subordinate Judge gave a decree for Rs. 1062-15-6, a re-measurement of the talook having shown a decrease in the amount of culturable land. *Held*, reversing the decision of the High Court, that the Subordinate Judge was right in making such a decree. *SURAT SOONDARI DEBYA v. PRANGOBIND MOOZOOMDAR* [5 C. L. R., 262

7. RESISTANCE TO ENHANCEMENT.

400. ———— Purchaser of putni talook.—Act X of 1859, s. 14.—Section 14, Act X of 1859, does not apply to the case of a purchaser of a putni talook at a sale under Regulation VIII of 1819, unless the jumma is shown to be a mere incumbrance which came into existence subsequently to the creation of the putni. *HURBOMOHUN MOOKERJEE v. BROJOKI-SHOEN ROY*. W. R., 1884, Act X, 103

401. ———— Suit to contest enhancement.—Act X of 1859, s. 14.—Question of rates.—In a suit by a tenant under section 14, Act X of 1859, to contest the landlord's right of enhancement, the question of rates may be decided, whether at the instance of the tenant or landlord. *GORACHAND v. GUDADHUR CHATTERJEE*. 7 W. R., 470

402. ———— Act X of 1859, s. 18.—Pleading.—Where a ryot brings a suit to contest the right to enhancement under section 18 of Act X of 1859, it is not necessary to plead in terms that he held at a fixed rate from before the decennial settlement. At the same time parties should use the exact terms of the pleas to assist which the presumption laid down in section 4 of Act X of 1859 had been created. *NOMUTOOLAH v. GOBIND CHUNDER DUTT*

[1 Ind. Jur., N. S., 2: 4 W. R., Act X, 25

KHODA NEWAZ v. NUBO KISHORE RAJ
[5 W. R., Act X, 53

403. ———— Suit for reversal of notice of enhancement.—Failure to prove holding at fixed rate.—In a suit for reversal of a notice of enhancement of rent the plaintiff endeavoured to show a holding at a fixed rate within Act X of 1859, sections 3 and 4. *Held* that upon his failing to prove such a holding the defendant was entitled to have the suit dismissed, and was not bound to show his title to enhance. *GUNGAPERSAUD SINGH v. RAMLOLL SINGH* [Marsh., 185: W. R., F. B., 59
1 Ind. Jur., O. S., 118: 1 Hay, 452

ENHANCEMENT OF RENT—continued.**7. RESISTANCE TO ENHANCEMENT—continued.**

Suit for reversal of notice of enhancement—*continued.*

PUDDOLOORUN BHADOORI v. CHUNDER NATH ROY

[1 Ind. Jur., N. S., 171: 5 W. R., Act X, 51

404. ——— Suit to resist notice of enhancement.—All the pleas under which a ryot can resist a notice of enhancement ought to be considered in the suit he brings to resist the notice. PUDDOLOORUN BHADOORI v. CHUNDER NATH ROY

[1 Ind. Jur., N. S., 171: 5 W. R., Act X, 51

405. ——— Suit to contest enhancement.—*Act X of 1859, s. 14.*—Where a ryot on whom notice of enhancement has been served sues under section 14, Act X of 1859, and fails to show that any excessive rate is demanded from him, or that he is not liable to pay the rent demanded, his suit ought to be dismissed. The Court ought not to go on to try defendant's case as if he were suing for enhancement. GUNGA NARAIN CHOWDREY v. KOFA PALI 11 W. R., 377

8. RIGHT TO DECREE AT OLD RATE ON REFUSAL OF ENHANCEMENT.

406. ——— Refusal of enhancement.—*Arrears of rent at admitted rate.*—Where, in a suit for arrears of rent at an enhanced rate, the rent was due under a *kabuliat* on the terms of which it was held that the rent was not liable to enhancement and the enhancement was consequently refused,—*Held* that a decree should not be given for arrears of rent at the rate agreed in the *kabuliat*. SOORASOONDREY DABEE v. GOLAM ALLY

[15 B. L. R., 125, note: 19 W. R., 142

Affirming the decision of the High Court in GOLAM ALLY v. GOPAL LALL THAKOOR . 9 W. R., 65

HURRONATH ROY v. GOBIND CHUNDER DUTT [6 W. R., Act X, 2

SABODA MOHUN ROY CHOWDREY v. SHIBPOOREE DOSSEE 24 W. R., 35

KASHEE PERSHAD SEN NAZIR v. JANU PERSHAD [2 C. L. R., 265

407. ——— *Failure to establish grounds.*—*Admitted rate.*—In a suit for rent at an enhanced rate, where the plaintiff is unable to establish the grounds upon which he claims enhancement, he may have a decree for rent according to the jumma for which the defendants admit liability. BHUBO SOONDEREE CHOWDHRAIN v. KASHENNATH ACHARJEA 22 W. R., 351

AKASHBUTTY KOONB v. HERRA RAM MUNDUR [24 W. R., 82

408. ——— *Failure to prove notice.*—*Decree at old rate of rent.*—*Suit for arrears of rent.*—The plaintiff sued for the arrears of rent of the years 1284, 1285, and also for the arrears of rent of the year 1286, the latter at an enhanced rate. The notice of enhancement was not

ENHANCEMENT OF RENT—continued.**8. RIGHT TO DECREE AT OLD RATE ON REFUSAL OF ENHANCEMENT—continued.**

Refusal of enhancement—*continued.*

proved, and the defendant insisted that the suit should be dismissed. *Held* that, though the notice of enhancement had not been proved, the plaintiffs were not thereby precluded from the arrears of rent at the old rate: *Mahomed Rohimooddeen v. Radha Mohun Mundul*, 6 W. R., Act X, 96. *Soorasoodery Dabees v. Golam Ally*, 15 B. L. R., 125, note; *Brojonath Tewares v. Grant*, 22 W. R., 18; *Bhagwan Dutt Jha v. Sheo Mangul Singh*, 22 W. R., 256; and *Bhubo Soonduree Chowdhraim v. Kashemath Acharjee*, 22 W. R., 351, referred to. GHUNSHYAM SINGH v. TARA PROSHAD COONDOD

[1 L. R., 8 Cal., 465: 10 C. L. R., 447

ENTICING AWAY MARRIED WOMAN.

See COMPOUNDING OFFENCE.

[1 L. R., 1 Mad., 191

See CASES UNDER PENAL CODE, s. 498.

EQUITABLE ASSIGNMENT.

See CASES UNDER DEPOSIT OF TITLE-DENDS.

1. ——— Assignment of mortgage bond.—*A.* pledged certain lands to *B.* in 1865, and on the 24th of July 1868 granted a *mokurrari* lease of the same lands to *C.* On the 5th of June 1868, shortly before the granting of the *mokurrari* lease, *A.* executed a simple mortgage of 8 annas of the same lands to *D.* It was proved that the consideration-money given by *C.* for the lease had been expended in paying off *B.*'s mortgage, and that the bond had been made over to *C.*, though not formally assigned to him. *Held* that, under these circumstances, *C.* was entitled to stand in the place of the first mortgagee; and that he was to be considered as having taken a regular assignment of the bond. DULI CHAND v. MONORUB LALL UPADHYA

[2 C. L. R., 18

2. ——— Assignment of decree.—*Claim of attaching creditor.*—*Assignee's incomplete equitable title.*—*A.* brought a suit against *B.*, which was dismissed with costs. *A.* subsequently brought a suit against *C.*, in which he obtained an *ex parte* decree, and assigned his interest under the decree to *D.* and *E.* *D.* and *E.* neglected to have their names substituted for that of *A.* on the record. *C.* applied for and obtained an order setting aside the *ex parte* decree, and allowing him to come in and defend the suit on deposit in Court of the sum sued for. "At the re-hearing the suit was again determined in favour of *A.* *B.* thereupon, in execution of his decree for costs, attached the moneys in the hands of the Court in the suit of *A.* against *C.* *D.* and *E.* obtained an *ad interim* injunction restraining *B.* from meddling with the money, and put in their claim under the assignment. *Held* that the incomplete equitable title of *D.* and *E.* could not prevail against the right of *B.*, the attaching creditor." GRISH CHUNDER SEIN v. GUDADHUR GHOSE

[1 L. R., 5 Cal., 869: 6 C. L. R., 496

EQUITABLE ASSIGNMENT—continued.

3. ——— Assignment by power-of-attorney to solicitor to receive moneys.—*Attachment of fund in Court.—Liability to refund money paid out of Court.*—*S.*, a creditor of the estate of a deceased person which was being administered by the Court, gave a power-of-attorney to his solicitors to receive all moneys coming to him under the decree, and by a letter authorised them, after satisfying their own claims out of the money to be received, to pay the balance to the plaintiff. The solicitors, in the presence of the plaintiff, agreed to draw the money and pay the plaintiff. The fund in Court to the credit of *S.* having been ascertained, was afterwards attached by the defendants, judgment-creditors of *S.*, and paid out of Court to the defendants. *Held* that *S.* had made a valid equitable assignment to the plaintiff, and that the defendants were bound to refund to the plaintiff the moneys paid out of Court to them. *SHAIR MULL v. SINGARAVELU MUDALI* [I. L. R., 6 Mad., 294]

4. ——— Assignment by power-of-attorney.—*Firm.—Partnership.—Contract made by one member of firm binding on firm.*—The firm of *S. & Co.*, the partners of which were *W. S.* and *F. E.*, took a contract from Government on 12th November 1877 to construct a barrel-house at the Gunpowder Manufactory at Kirkee, and on the 28th November 1877 the plaintiff agreed to advance moneys "up to Rs. 15,000" for the purpose of enabling the firm to carry out the contract. Under the agreement the plaintiff was to receive all sums to become due from the Government on the contractors' bills and to pay the balance to the firm after repaying himself all advances with interest. On the same day the firm executed a power-of-attorney to the plaintiff, authorising him to receive from the Government Engineer all such sums to become due to the firm under the contract, which power-of-attorney was deposited by plaintiff in the office of the Executive Engineer at Poona. In March or April 1878 *W. S.* left for England, up to which time Rs. 4,900 had been advanced by the plaintiff, and a balance of Rs. 14,942-5-10 still remained due to him after giving credit for the sums received on the bills passed by the Executive Engineer. On 24th July 1878 the plaintiff entered into a fresh agreement with *F. E.*, similar to the former one, to make further advances to the firm up to Rs. 16,000 in addition to Rs. 15,000 on the same terms as those mentioned in the previous agreement, and by means of these advances the contract was completed at the end of 1879. In 1878 the defendant obtained a decree against *W. S.*, and attached the right, title, and interest of *W. S.*, in a sum of Rs. 5,084-11-9 in the hands of the Executive Engineer, which was then due to the firm on the contract. The plaintiff, who alleged that Rs. 18,700-1-11 were due to him from the firm, applied to have the attachment removed, which application was refused on 30th September 1879 and the sum attached was paid to the defendant. The plaintiff sued the defendant to recover from him Rs. 5,084-11-9. *Held* that the first agreement of 28th November 1877, coupled with the execution of the power-of-attorney to him of the same date, amounted to an assignment to the plain-

EQUITABLE ASSIGNMENT.—Assignment by power-of-attorney—continued.

tiff of the sums to become due to *S. & Co.*, on the bills passed by the Executive Engineer. *Held*, also, that the second agreement, although made by one member only of the firm of *S. & Co.* with the plaintiff, was under the circumstances both necessary to the carrying out of the partnership business and in accordance with the ordinary practice of such partnerships as that of *S. & Co.*, and was therefore binding on the firm, and that the two agreements, accompanied by the power-of-attorney, operated as an assignment of all the moneys to become due on the contractors' bills as a security for the plaintiff's advances with interest, and that the plaintiff was therefore entitled to recover the sum claimed from the defendant. *JAGABHAI LALLUBHAI v. RUSTAMJI NASARWANJI*. I. L. R., 9 Bom., 311

EQUITABLE MORTGAGE.

See BILL OF EXCHANGE.

[I. L. R., 3 Calc., 174]

See CASES UNDER DEPOSIT OF TITLE-DEEDS.

See MORTGAGE—FORM OF MORTGAGE.

[3 N. W., 54]

———— Evidence of assignment.—To entitle a person to claim as equitable mortgagee it is not sufficient to show that he paid off the original mortgage, but also that it was his own money that was paid, and that he was to stand in the position of the original mortgagee. *PANDORUNG BUHAL PUNDIT v. BALKRISHN HURBAJEE MAHAJAN* [5 W. R., P. C., 124; 2 Moore's I. A., 60]

EQUITY OF REDEMPTION.

See CASES UNDER MORTGAGE.

———— Surrender of—

See LIMITATION ACT, 1877, ART. 127 (1859, s. 1, CL. 13).

[6 B. L. R., P. C., 530]

See VENDOR AND PURCHASER — PURCHASER OF MORTGAGED PROPERTY.

[6 B. L. R., P. C., 530]

1. ——— Attachment in execution of decree.—*Attachment.—Money-decree.—Semble.*—An equity of redemption cannot be taken in execution of a decree for a money-debt under the attachment clauses of Act VIII of 1859. *BRAJANATH KUNDU CHOWDREY v. GOBIND MANI DAS*

[4 B. L. R., O. C., 83]

2. ——— Sale of equity of redemption and purchase by mortgagee.—Under Act VIII of 1859 an equity of redemption can be sold in execution of a decree. *SARASWATI DEBI v. NABADWIP CHANDRA GOSSAIN*. 5 B. L. R., 380

3. ——— Position of purchaser.—*Trustee.*—A mortgagee cannot, properly, in execution of a simple decree for money, the repayment of which is secured by mortgage, attach and sell the mortgagor's equity of redemption in the property

**EQUITY OF REDEMPTION.—Attach-
ment in execution of decree—continued.**

mortgaged; but if he do so, and purchase it himself, he becomes a trustee for the mortgagor, against whom he cannot acquire an irredeemable title. *KAMINI DEBI v. RAMLOCHUN SIRCAR* . 5 B. L. R., 450

4. ——— Sale in execution of decree.—*Position and powers of purchaser.*—A mortgagee having obtained judgment on the covenant in a mortgage deed, cannot, by becoming the purchaser at a sale of the mortgaged property in execution of his decree, deprive the mortgagor of his right of redemption. An injunction was granted to restrain the sale. *RAM LOCHUN SIRCAR v. KAMINI DEBI*
[5 B. L. R., 460, note

See S. C. on appeal, where the decision, however, seems to have been confined to the special circumstances of the case . . . 10 B. L. R., 60, note

**ERROR AFFECTING THE MERITS
OF THE CASE.**

See CASES UNDER APPELLATE COURT—
OTHER ERRORS AFFECTING MERITS OF
SUIT.

See CASES UNDER APPELLATE COURT—
REJECTION OR ADMISSION OF EVIDENCE
ADMITTED OR REJECTED BY COURT BE-
LOW.

ERROR IN LAW.

See CASES UNDER SPECIAL APPEAL—
GROUNDS OF APPEAL.

See CASES UNDER SPECIAL APPEAL—
OTHER ERRORS OF LAW AND PROCEDURE.

**ERROR IN LAW, SETTING ASIDE
CONVICTION FOR—**

See ACCOMPLICE.
[B. L. R., Sup. Vol., 459; 5 W. R., Cr., 80
3 B. L. R., F. R., 2, note
5 W. R., Cr., 59

See CASES UNDER REVISION—CRIMINAL
CASES.

**ERROR IN STATEMENT OF ACCOUNT
IN AGREEMENT.**

See MORTGAGE—ACCOUNTS.
[I. L. R., 3 Cal., 602

ESCAPE FROM CUSTODY.

See CONTEMPT OF COURT—PENAL CODE,
s. 174 . . . 1 Bom., 38

See JURISDICTION OF CRIMINAL COURT—
OFFENCES COMMITTED ONLY PARTLY
IN ONE DISTRICT—ESCAPE FROM CUS-
TODY . . . 1 Bom., 139

See SENTENCE—GENERAL CASES.
[8 W. R., Cr., 85

ESCAPE FROM CUSTODY—continued.

1. ——— Criminal offence.—*Police Amendment Act, Pres. Towns (XLVIII of 1860), s. 8.—Offence at Common Law.*—To escape from custody under civil process is not a criminal offence within the meaning of section 8 of the Presidency Towns Police Amendment Act of 1860. *Quare*.—Whether such an escape without force is a misdemeanour at Common Law. *REG. v. CONNON* . 6 Bom., Cr., 15

2. ——— Arrest under civil process, Escape from.—*Criminal liability of officer suffering escape.*—*Penal Code (Act XLV of 1860), s. 223.*—Section 223 of the Penal Code applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under civil process. *QUEEN-EMPERESS v. TATAULLAH* . . . I. L. R., 12 Cal., 180

3. ——— Custody of Sheriff.—*Relaxation of imprisonment.—Custody in private house.*—If a Sheriff, upon the representation of a debtor's ill-health, takes upon himself of his own authority to relax the debtor's imprisonment, by letting him reside out of jail, it is an escape for which the Sheriff is liable to an action for damages. If the judgment-creditor voluntarily discharges the debtor out of custody, even for a week only, he cannot, by any agreement which he might have made with the debtor, afterwards retake him, although the debtor may have agreed that, if he does not pay the money within a week, he shall be retaken. A debtor removed from prison under a rule of Court, whether with or without the consent of his creditor, and kept in charge of a Sheriff's officer in a private house, is still in the custody of the Sheriff. The Sheriff may, without a rule of Court, refuse to allow the debtor to reside out of prison, though the creditor may have consented to it. When the Sheriff and all parties consent to the debtor being kept in custody in a private house, the Sheriff is liable to an action for escape on proof of want of proper care and surveillance; but it would be a matter of fact for a jury to consider whether the creditor, being in some measure instrumental to the escape, ought to recover against the Sheriff. *HAINES v. EAST INDIA COMPANY*
[4 W. R., P. C., 99; 6 Moore's I. A., 467

4. ——— Arrest under process of Revenue Court.—*Civil Procedure Code, 1877, s. 651.*—“*Revenue Court.*”—A Revenue Court is a “Court of Civil Judicature” within the meaning of section 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section. *EMPERESS v. HARAKHNATH SINGH* . I. L. R., 4 All., 27

5. ——— Arrest in absence of warrant.—*Civil Procedure Code, 1877, s. 651.—Arrest in execution of decree.—Possession of warrant of arrest.*—The apprehension of a judgment-debtor in execution of a decree without the officer making the apprehension having the warrant of the Court executing the decree in his possession at the time of making the apprehension is illegal; and therefore in such a case the judgment-debtor does not render himself liable to

ESCAPE FROM CUSTODY.—Arrest in absence of warrant—continued.

punishment under section 651 of the Civil Procedure Code, if he escapes from the custody of the officer making the apprehension. *EMPRESS v. AMAR NATH* [I. L. R., 5 All, 318]

6. ———— *Discharge by Judge.—Liability of Sheriff.*—Where a prisoner is arrested under a warrant of the High Court at Calcutta directed to the Sheriff, authorising his arrest for the purpose of being brought before the Court and committed to prison, and the commitment is ordered, but no warrant of commitment is drawn up, and the Sheriff delivers the prisoner to the jailor, with no other document than his own order to his bailiff to arrest the prisoner, and the latter, in consequence, is discharged from custody by a Judge on application on a writ of *habeas corpus*.—*Held* that the Sheriff is not liable for an escape. *MAHOMED CONJEE v. DUNDAS* . . . 1 Ind. Jur., N. S., 238

7. ———— *Custody for offences not punishable under Penal Code.—Criminal offence.*—Escapes from custody by parties detained for offences not punishable under the Penal Code are punishable under the Penal Code. *ANONYMOUS* [3 Mad., Ap., 11]

8. ———— *Custody from inability to give security.*—A person in custody from his inability to give security is not in custody for an offence with which he has been charged, or of which he has been convicted. He cannot therefore be convicted of escaping from such custody under section 224 of the Penal Code. *ANONYMOUS* . . . 3 Mad., Ap., 23

9. ———— *Custody of village officers.—Penal Code, s. 224.*—Escape from the custody of a village watchman by a person wanted by the police on a charge of theft and arrested on suspicion by the village watchman is no offence under section 224 of the Penal Code. *The Queen v. M. Sinnadu Padigachi* (*Weir*, p. 66) followed. *QUEEN v. BOJJIGAN* [I. L. R., 15 Mad., 22]

10. ———— *Custody while giving security for good behaviour.—Penal Code, s. 224.*—The defendant being detained in custody for the purpose of giving security for good behaviour escaped from that custody. *Held* that he had not committed an offence under section 224 of the Penal Code. *ANONYMOUS* . . . 7 Mad., Ap., 41

11. ———— *Arrest of person required to give security for good behaviour.—Escape from such arrest.—Conviction for such escape illegal.—Act XLV of 1860, s. 40.—Criminal Procedure Code, ss. 55, 110, 117, 118.*—An order was issued to a police officer directing him to arrest *K.* under section 55 of the Criminal Procedure Code, as a person of bad livelihood. *K.*, with the assistance of three others, resisted apprehension and escaped. *Held* that *K.* was not charged with an "offence" within the meaning of that term as defined in section 40 of the Penal Code, and that consequently no offence made punishable by section 224 or section 225 of the Penal Code had been committed in connection with his evasion of

ESCAPE FROM CUSTODY.—Arrest of person required to give security for good behaviour—continued.

arrest. *Empress v. Shasti Churun Napit*, I. L. R., Cal., 331, followed. *QUEEN-EMPRESS v. KANDHAIA* [I. L. R., 7 All, 67]

12. ———— *Escape while being taken before Magistrate.—Penal Code, ss. 224, 225.—Subsequent conviction for such escape.*—An escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either section 224 or section 225 of the Penal Code. *EMPRESS v. SHASTI CHURUN NAPIIT*

[I. L. R., 8 Cal., 331; 10 C. L. R., 290]

13. ———— *Escape from transportation.—Penal Code, ss. 224, 226.*—To constitute the offence of escaping from transportation under section 226 of the Penal Code, it is essential that the convicts should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation,—*Held* that he had committed an offence punishable under section 224 and not under section 226 of the Penal Code. *QUEEN v. RAMASAMY* . . . 4 Mad. Rep., 152

14. ———— *Apprehension without warrant.—Penal Code, s. 224.*—Where a person apprehended on a charge of a cognisable offence escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But if charged with a non-cognisable offence, the police officer who apprehends him without warrant does not have him in lawful custody, and his escape is not punishable under the Penal Code, section 224. *QUEEN v. RAM SARAN TEWARY* [24 W. R., Cr., 45]

15. ———— *Escape from confinement negligently suffered by public servant.—Escape from confinement intentionally suffered by public servant.—Penal Code, ss. 222, 223.—Criminal Procedure Code, ss. 61, 167.*—While a case was being investigated by *A.*, a police officer, under the provisions of Chapter XIV of the Criminal Procedure Code, *T.* presented a petition to the Magistrate having jurisdiction to try the case, in which he accused *W.* of being concerned in the commission of the offence, and prayed that he might be arrested and sent to the police officer investigating the case. *W.* was accordingly arrested and brought before the Magistrate, who, having examined *T.* on oath and taken *W.*'s statement, made an order on the petition to the following effect: "As no police report has been made in this matter, and the petitioner only has presented this petition, ordered that these papers of *W.* be sent to the District Superintendent of Police, and if a report of this matter be made, the case may be sent up according to rule with the papers." In accordance with this order *W.* was taken to the District Superintendent of Police and was sent by that officer to *A.* *Held* that the Magistrate's order might be taken to have been passed under section 167 of the Code, and therefore *W.* was

ESCAPE FROM CUSTODY.—Escape from confinement negligently suffered by public servant—*continued*.

lawfully committed to the custody of the police, and A. was bound to detain him in such custody until released therefrom by due course of law; and that consequently A. having negligently suffered W. to escape, had been properly convicted under section 223 of the Penal Code. *EMPERESS v. ASHRAF ALI*

[1 L. R., 6 All, 129]

16. ——— Obstructing public servant in his duty.—*Penal Code ss. 186, 224*.—Escaping from lawful custody is not obstructing a public servant in the execution of his duty within the meaning of section 186 of the Penal Code. *REG. v. POSHUBIN DHAMBARI PATIL*

[2 Bom., 134; 2nd Ed., 128]

17. ——— Right of entry in pursuit of prisoner escaped.—*Entry into lodging-house*.—Court peons may pursue into the yard of a lodging-house, the door leading into which is open, a prisoner who has escaped from their custody. *DUKHOO v. CHUNDRO KANT CHOWDHRY* . 3 W. R., Cr., 68

18. ——— Rescue from lawful custody.—*Penal Code, s. 225*.—Before a conviction can be had under section 225, Penal Code, it must be proved that the person whom the accused are charged with having rescued was in lawful custody at the time. *QUEEN v. DRUMBER AHIE* . 21 W. R., Cr., 22

19. ——— *Penal Code, s. 225*.—Where a police officer, duly appointed under Act V of 1861, was engaged in the discharge of his duty as such police officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of section 225 of the Penal Code. *QUEEN v. ASSAM SEUREFF*

[13 W. R., Cr., 75]

ESCHEAT.

See GRANT—CONSTRUCTION OF GRANT.

[1 L. R., 1 Calo, 391]

See ILLEGITIMACY . 11 B. L. R., 144

1. ——— *Onus probandi*.—*Jus tertii*.—In a suit by the Crown claiming lands as an escheat, which are admittedly in the possession of the parties claiming as heirs, the onus is on the Crown to show that the last proprietor died without heirs. It is open to the defendant in such a suit to set up any *jus tertii* to bar the claim of the Crown. *GRIHDHARI LALL ROY v. GOVERNMENT OF BENGAL*

[1 B. L. R., P. C., 44; 10 W. R., P. C., 31]

S. C. in High Court. *GOVERNMENT v. GREEN-DHAREE LALL ROY* . 4 W. R., 13

2. ——— Territorial law of India.—The illegitimate son of an Englishman by a Mahomedan woman died intestate without lawful issue, leaving him surviving his mother, his mistress, and several illegitimate children. Held that his property passed to the Crown in default of heirs. The

ESCHEAT.—Territorial law of India—*continued*.

territorial law of British India is a modified form of English law. *SECRETARY OF STATE v. ADMINISTRATOR GENERAL OF BENGAL*

[1 B. L. R., O. C., 87]

3. ——— Cause of action.—*Possession*.—*Title*.—The period during which the Government may sue on total failure of natural heirs dates from the time when the failure of heirs or reversioners became apparent. In the case of parties without any legal title a possession of sixty years is necessary to create a title against the Government. *PURSUM LAL v. GOVERNMENT* . W. R., 1864, 102

4. ——— Brahmin dying without heirs.—*Right of Crown*.—On the death of a Brahmin (whether sacerdotal or not) without heirs, the sovereign power in British India is entitled to take his estate by escheat, subject, however, to the trusts and charges previously affecting the estate. *COLLECTOR OF MASULIPATAM v. CAVALY VENCATA NARAINAPAH*

[2 W. R., P. C., 59; 8 Moore's I. A., 500]

5. ——— Sale by proprietors free of revenue.—*Death of holder without heirs*.—The proprietors of a mehal held free of revenue transferred by sale all their rights and interests in a garden situated within the area of the mehal. When revenue was imposed on the mehal no interference with the rights of the holder of the garden took place. Revenue engagements were not taken from him and he remained as before a proprietor, although not a proprietor who engaged for the revenue of the mehal. It was held that the garden did not escheat to the zemindars of the mehal on the death of the holder without heirs. *CHIRAGHAN v. HARBANS*

[7 N. W., 213]

6. ——— Failure of male heirs.—*Acquiescence*.—*Waiver of right*.—*Succession of females*.—A suit by the Government for the possession of the polliam of Erasca Naikoor in Madras as an escheat for want of male heirs dismissed, the Government having acquiesced in the right of female succession to the polliam, and possession having been held for a period of eighteen years after the alleged escheat. *COLLECTOR OF MADURA v. VEERACAMMOO UMMAL*

[9 Moore's I. A., 446]

ESTATES-TAIL.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—SPECIAL CASES—PERPETUITIES, TRUSTS, &c.

[4 B. L. R., O. C., 103]

9 B. L. R., 377

ESTOPPEL.

Col.

- | | |
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| 1. STATEMENTS AND PLEADINGS | 1673 |
| 2. LANDLORD AND TENANT, DENIAL OF TITLE | 1681 |
| 3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS | 1683 |
| 4. ESTOPPEL BY JUDGMENT | 1691 |
| 5. ESTOPPEL BY CONDUCT | 1697 |
| 6. MISCELLANEOUS CASES | 1718 |

ESTOPPEL—continued.

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF—

[I. L. R., 2 All., 809
I. L. R., 6 All., 322; I. R., 11 I. A., 20]

See BILL OF LADING . 18 B. L. R., 394

See BOND . . . 8 W. R., 316

[8 W. R., Mis., 23]

I. L. R., 1 Bom., 45

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF AND SETTING ASIDE COMPROMISE . I. L. R., 1 All., 651

See DECREE—EFFECT OF DECREE.

[5 B. L. R., 321]

See FRAUD . . . 12 B. L. R., 433

See ILLEGITIMACY . 11 B. L. R., 144

See CASES UNDER JUDGMENT IN REM.

See JURISDICTION OF CIVIL COURT—MAGISTRATES' ORDERS, INTERFERENCE WITH— . I. L. R., 6 Calo., 291

See LACHES . . . 14 B. L. R., 386

See LIEN . . . I. L. R., 3 Calo., 58

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—WAIVER OF RIGHT OR REFUSAL TO PURCHASE.

[9 B. L. R., 253]

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[I. L. R., 1 Bom., 314]

See REGISTRATION ACT, 1877, s. 49.

[I. L. R., 2 Bom., 273]

See CASES UNDER RES JUDICATA—ESTOPPEL BY JUDGMENT.

See VENDOR AND PURCHASER—LIEN.

[3 B. L. R., A. C., 407]

See VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY.

I. L. R., 2 Bom., 650

1. STATEMENTS AND PLEADINGS.

1. ———— Proof of estoppel.—Estoppels must be made out clearly. *TWERDIE v. POONCHUNDER GANGOOLY* . . . 8 W. R., 125

2. ———— Statement in former suit.—*Estoppel in pais*.—*Pleadings*.—*Decision on pleadings*.—An estoppel *in pais* need not be pleaded in order to make it obligatory. With the Indian system of pleading, a party's statement in a judicial proceeding cannot be excluded like allegations in bills in equity and pleadings at common law. But mere statements for the purpose of a particular judicial proceeding can only be conclusive evidence in another proceeding, as to such material facts embodied therein as must have been found affirmatively to warrant the judgment of the Court upon the issues joined. They are then conclusive between the same parties, not because they are the statements of those parties, but because, for all purposes of present and prospective litigation, they must be taken as truth. *A.* brought a pauper suit, and virtually denied possession of certain property. *B.* petitioned to dispauper *A.*,

ESTOPPEL—continued.**1. STATEMENTS AND PLEADINGS—continued.****Statement in former suit—continued.**

alleging that *A.* was possessed of such property. The Court decided that *A.* was in possession, and rejected her prayer to be allowed to sue as a pauper. *Held*, in a subsequent suit by *A.*'s representative against *B.*'s representative for the property, that even if *A.*'s allegation found to be false could be treated as an estoppel, *B.*'s allegation found to be true would also be an estoppel; and "estoppel against estoppel setteth the matter at large;" but that, although *A.*'s allegation was receivable evidence against *A.* and her representative, they were not concluded by such allegation and the decision thereon. *CIVA RAU NANAJI v. JEVAHA RAU* . . . 2 Mad., 31

3. ———— *Admission*.—A plaintiff's statement in a former suit held not to bind him conclusively. It should be taken as an admission. *JUGUTENDUR BUNWARER v. DIN DYAL CHATTERJEE* . . . 1 W. R., 310

BISSHESURE DEBER v. JANKHE DOSS

[1 W. R., 162]

KHANTOMONER DEBIA v. KOMODINER DEBIA

[25 W. R., 69]

4. ———— Plea in former suit.—*Contrary defences*.—*Held* that the defendants having, in a previous suit, set up the defence that *K.* was disqualified by insanity, and taken the decision of the Court on that ground, were estopped now from setting up the defence that he was not so disqualified, and that he was entitled to succeed. *BRITBROOKYN LAL AWASTEE v. MAHADEO DOBEY*

[15 B. L. R., 145, note: 17 W. R., 422]

5. ———— The plaintiff sued the defendant for rent, basing his claim upon a kabuliati bearing date 6th Strabun 1258 B.S. His suit was dismissed, and the kabuliati pronounced to be spurious. *Held* that he was not estopped from afterwards suing the same defendant to set aside a pottah of the 27th Aughran 1244 B.S., under which the defendant claimed, the validity of the pottah not being in issue in the former suit. *OOMANATH ROY CHOWDHRY v. RAGHOONATH MITTER*

[Marsh., 43; W. R., F. R., 10: 1 Hay, 75]

JUGGUT MISSEER v. BABOO LAL

[5 W. R., Cr., 50]

6. ———— Admission by party in other cases.—*Case between different parties*.—An admission made by a party in other cases may be taken as evidence against him, but cannot operate against him as an estoppel in a case in which his opponents are persons to whom the admission was not made, and who are not proved to have ever heard of it, or to have been misled by it, or to have acted in reliance upon it. *CHUNDERKANT CHUCKREBUTTY v. PRABEE MOHUN DUTT* . . . 5 W. R., 209

7. ———— Statement in former suit.—*Assertion as to nature of tenure of land*.—*Held* that the plaintiff's assertion in a former suit claiming as "malikana" the land now in dispute, even if the

ESTOPPEL—continued.**1. STATEMENTS AND PLEADINGS—continued.****Statement in former suit—continued.**

identity of the land now claimed with the land then in suit be established (which had not been done), does not absolutely preclude him from asserting "mou-rasi" right to the same land, and the Court from adjudging his true right. **RAM SAHAI MISSEER v. BIRRAJ SINGH** . . . 1 *Agra*, Rev., 19

8. ————— Denial of pottah.

—A ryot is estopped from pleading, in a suit for a kabuliati and for determination of the rate at which such kabuliati is to be delivered, a pottah which he denied in a former suit for rent. **MAHOMED HOSSEIN v. PEEEROO MULLICK** . . . *W. R.*, 1884, Act X, 115

9. ————— Objection to regular suit.—*A.* having obtained an order for the reversal of certain execution proceedings instituted by *B.* on the ground that they were barred by limitation, and carried on fraudulently without his knowledge, *B.* had that order set aside on appeal, on the ground that there was no execution case before the Court in which such an order could be made. *A.* then brought a regular suit to set aside the execution proceedings, when *B.* objected that a regular suit would not lie under the provisions of section 11, Act XXIII of 1861. *Held* that *B.* was estopped from taking that objection in the present suit. **HUB PROSHAUD ROY v. ENAYAT HOSSEIN** . . . 2 *C. L. R.*, 471

10. ————— Admission.—Receipt of money.—The plaintiffs, in their answer to a plaint by the defendants, admitted that they had received a certain sum on behalf of the defendants, and alleged that they had applied it in a particular way. The Judge discredited this statement, and made a decree not founded upon it. The plaintiffs thereupon sued for the sum the receipt of which they had so admitted. *Held* that such admission was evidence against them. **BUGMUNT NARAIN JHA v. LOLL JHA** . . . *Marsh.*, 48: 1 *Hay*, 114

LOLL JHA v. BUGMUNT NARAIN JHA

[1 *Ind. Jur.*, O. S., 104

11. ————— Contradictory statements.—*Held* that the former statement of the plaintiff, which was at variance with the one now made, was not an estoppel, but the Court ought to have determined which of the two statements was correct. **JOY NARAIN v. TORABUN** . . . 3 *Agra*, 216

12. ————— Pleading.—Inconsistent claims.—Where a plaintiff deliberately claimed lands as rent-free he was not allowed, merely on the ground of the proprietor admitting the lands to be leased to plaintiff's vendors, or even of the defendant making a somewhat similar admission, to benefit by such admissions and vary his claim. **NI-DHA CHOWDREY v. BUNDA LALL TACOOB**

[6 *W. R.*, 289

13. ————— Admission.—Because the decree in a former suit against the present plaintiff and the alleged holders of a separate half share awarded to another co-sharer who was the

ESTOPPEL—continued.**1. STATEMENTS AND PLEADINGS—continued.****Statement in former suit—continued.**

plaintiff in that case, owing to a mistake of that plaintiff, supported by the admission of the present plaintiff less than he was legally entitled to, the mistake need not be perpetuated, nor will his former admission estop the plaintiff in a subsequent suit. **RAM SUBOHN SINGH v. KASHEE ROY**

[6 *W. R.*, 176

14. ————— Survey award made without authority.—In a suit for certain immoveable property it was held that the plaintiffs were not bound by an Act IV award against a person in whose name the property had been purchased by the father of the plaintiffs, but who had not either title or interest in the property, and did not conduct the Act IV proceeding with any authority from the plaintiffs. *Held*, too, that plaintiffs were not estopped by statements made by them as parties in another suit, which did not affect their status, nor by their failure to set forth their title in a former suit brought against them for meane profits of the land in dispute. **MOHENDRA NATH MULLICK v. RAKHAL DOSS SINGAR**

[10 *W. R.*, 344

15. ————— Finding against statement.—The allegation of a plaintiff in a former suit, which was referred to arbitration, having been overruled by the arbitrators, and another state of things found by them to exist, he is not estopped by his former allegation from bringing a further suit founded on the finding of the arbitrators. **RAM CHUNDER DEY v. KISSEN MOHUN SHAHA**

[6 *W. R.*, 68

16. ————— Plaintiffs sued for their share in the property of their family. The Judge rejected their claim, mainly on the ground that when parties in a former suit respecting the same property they had pleaded division, and the Court found that the family was undivided. *Held* that the Judge was wrong in attributing to the plaintiff the plea of division in the former suit, and, even if such plea had been raised, the judgment in that suit, pronouncing the status of the family to be that of non-division, was conclusive on that subject, and that it was open to the plaintiffs to sue for enforcement of their rights to effect a division. **SANGOOVIE v. KOLLATHOORAYEN** . . . 1 *Ind. Jur.*, O. S., 116

WATSON v. POKHUR DOSS PAUL. MOHINER DOSS v. POKHUR DOSS PAUL . . . 4 *W. R.*, 2

17. ————— Disclaimer of defendant.—The plaintiff sued for a quantity of land which was family property in the possession of his brother, the defendant. The defendant, in a former suit, declared that the land sued for was not family property but belonged to his sister, and in this suit he claimed the property under her will. The lower Court found that the property was family property, but that the plaintiff was entitled to a decree for the whole property on the ground that the disclaimer of the defendant in the former suit amounted to an estoppel and forfeiture of his share. *Held* that the effect of the defendant's conduct did not operate

ESTOPPEL—continued.**1. STATEMENTS AND PLEADINGS—continued.****Statement in former suit—continued.**

either as an estoppel or a forfeiture, and that the plaintiff was only entitled to a decree for a moiety of the property. *VELLAYAN CHETTY v. AIYAN alias TRUNDAMURTY CHETTY* . . . 4 Mad., 374

18. — False statement in plaint.

—A plaintiff is not estopped by an evidently false statement in his plaint as to possession, but the Court may look behind the statement and determine upon its truth or otherwise, and affirm or disallow it, as may seem right and proper. *CHOONES LALL v. KERAMUT ALI* . . . W. R., 1864, 282

19. — Erroneous admission in petition.—A party is not bound by an erroneous admission in a petition. *KRISTO PERA DOSSEN v. PUDDO LOOHUN MYTIE* . . . 6 W. R., 283

20. — Statement of dispossession in petition.—*Suit subsequently brought alleging possession.*—A statement of dispossession made in a petition preferred under section 269 of Act VIII of 1859, by a person claiming land sold in execution of a decree, and ordered to be put in possession of the auction-purchaser, cannot operate as an estoppel in a suit subsequently brought by the claimant to "establish her right" on the allegation of her being in possession of the land in question. *KHANUM JAN v. BUTTON LAL* . . . 8 W. R., 95

21. — Statement by stranger to suit.—*Transfer of interest of judgment-debtor.*—*Liability.*—Where a person filed a petition in a suit stating that all the interests of the judgment-debtor had been transferred to him, and for several years thereafter opposed all attempts, on the part of the decree-holder, to issue execution,—*Held* that the person who had so come forward, and had so interfered in the suit, was liable as a defendant, and that execution could be issued against him. A stranger to a suit cannot (even with the decree-holder's consent) so deal with a judgment-debtor as to acquire an interest in the suit which will enable him to oppose and prevent the execution of the decree, without rendering himself liable to be put upon the record as a judgment-debtor. *LALLA POOROHIT LALL v. SAREERUN* . . . 7 W. R., 368

22. — Contradictory statements.

Admission.—In proceedings under Act XXVII of 1860, the plaintiff, a widow, called herself the guardian and trustee of her minor adopted son, but the certificate was granted to the defendant, who claimed under the husband's will. The plaintiff afterwards sued as her husband's widow, without an adopted son, to call in question the will set up by the defendant, the so-called adopted son supporting her action. *Held* that the plaintiff's former statement in the Act XXVII case was no bar to her present action. *SOORJ MONI DOSSEN v. SUBROOP CHUNDER SHAH*

[W. R., 1864, 198]

23. — Admission of father as to ancestral property.—*How far binding on sons.*—In the case of ancestral property the admission of a father may be

ESTOPPEL—continued.**1. STATEMENTS AND PLEADINGS—continued.****Contradictory statements—continued.**

used as evidence against his sons, but is not conclusive and does not stop the sons from contending that such admission was collusive or erroneous. *NOWBUT RAM v. DURBAREE SINGH* . . . 2 Agra, 145

24. — Plea in former suit.—*Denial of will.*—*Held*, the plaintiffs were not estopped in a suit under a will for a legacy, by the denial of the will by the persons through whom they claimed. *NANA NARAIN RAO v. RAMA NUND* . . . 2 Agra, 171

25. — Erroneous pleas.—*Subsequent contradictory evidence.*—In a suit for land the defendant pleaded that the land was his ancestral estate. He subsequently tendered evidence, then first obtained, to show that the land had in 1814 been mortgaged to, and in 1831 bought by, his father. *Held* that the evidence was receivable, notwithstanding the erroneous plea. *RANGASWAMI AYYANGAR v. KRISTNA AYYANGAR* . . . 1 Mad., 72

26. — Admission by reversioner.—*Suit by party to prevent sale of property in which he has an interest.*—*Held* that a party was not estopped from bringing a suit to bar sale of a property in which he had a reversionary right by the fact that he had admitted on previous occasions that he had no present right in the property. *SUNJ BAREE v. PAYAG PATUK* [1 N. W., Part II, p. 5: Ed. 1878, 65]

27. — Admission of predecessor in title.—*Interest in property.*—*Decree.*—When the admission of his predecessor in title is set up against a party, it is open to him to show that the person whose admission is alleged to bind him had at the time no interest in the property (Evidence Act, section 18), notwithstanding a decree under which the property was sold as the property of the admitting person and another co-debtor. *BEFIN BEHAREE SINGH v. NIL-MONI SINGH DHO* . . . 25 W. R., 125

28. — Admission of having transferred rights.—*Failure of transferee to prove it.*—*A.* sold his right and interest under a decree to *B.* Subsequently *A.*'s right and title were sold in satisfaction of a decree against him and purchased by *C.* *B.* sued *C.*, but failed to establish his title, or right to set aside the sale to *C.* *A.* appeared in that suit and admitted having parted with his rights to *B.* *Held* that he could not be now allowed to resume them, merely because *B.* had failed to prove his title against *C.* *HURO PERSHAD ROY CHOWDHRY v. RAM CHUNDER BABOO* . . . 7 W. R., 360

29. — Admission in former suit.—*Effect between different parties.*—To a suit brought by certain mortgagees against the inamdars to enforce mortgage rights existing since 1842, the defence was made that possession taken of the inam lands by the Collector in 1845 had determined the original inam rights therein, as well as the lien of the mortgagees. The present zemindar, son and successor of the grantor of 1863, now sued claiming that he had determined the tenancy by a notice to quit. *Held* that the

ESTOPPEL—continued.**1. STATEMENTS AND PLEADINGS—continued.****Admission in former suit—continued.**

above did not operate as any estoppel as between the plaintiff and the inamdars, the zemindar not having been a party to the suit, but was only an admission, and not conclusive. **MAHARAJA OF VIZIANAGRAM v. SURYANARAYANA**. I. L. R., 9 Mad., 307

30. — Difference between contention in Original Court and Appeal Court.—*Quere*,—Whether the plaintiff, having successfully contended before the Assistant Judge that his plaint was for a declaration of right merely without consequential relief, and therefore properly stamped, could be permitted to say in appeal that the house was the subject-matter of the suit within the meaning of section 16 of the Bombay Courts Act, XIV of 1869. **MOTICHAND JAICHAND v. DADABHAI PRSTANJI**

[11 Bom., 186

31. — Diverse contentions in pleading.—*Account*.—*Limitation*.—A defendant having by his written statement pleaded that if a general partnership account were taken he would be found not to be indebted to the plaintiff in respect of contribution claimed, cannot also plead the Limitation Act as a bar to the taking of such account. **DAYAL JAIRAJ v. KHATAV LADHA**. 12 Bom., 97

32. — It is not open to a defendant to change the whole nature of his defence at the last moment, and to set up in a Court of appeal a plea which he has directly and fraudulently repudiated in the Court below. In an ejectment suit, the defendants, from whom the plaintiff alleged that he had purchased the land from which he sought to eject them, and who had before suit by parol disclaimed the plaintiff's title, set up in their written statement an adverse title in themselves. The lower Court found the plaintiff's allegation to be true. *Held* that the defendants were estopped from contending on appeal that they were occupancy ryots, and therefore not liable to be ejected; and that by their own conduct they had forfeited the rights which they claimed. **SUTYABHAMA DASSEN v. KRISHNA CHUNDER CHATTERJEE**. I. L. R., 6 Cal., 55 [6 C. L. R., 375

33. — False admission of ancestor.—A false admission made by a serishtadar to avoid losing his appointment, does not estop his heirs from afterwards setting up the truth. **MAHOMED WAYEZ v. SUGHERBOONISSA**. 6 W. R., 38

34. — Fraudulent statement.—*Admission*.—When, in answer to a suit, two parties combine to make a statement to defeat a third party, it is competent to either of those parties, when they are opposed to each other in a suit, to say that the combined statement was false, and intended as a fraud against the third party. The admission in the former suit is not to be regarded as an estoppel against either of the two parties in a subsequent suit, but the Court is competent to enquire into the character of the transaction and to declare it void, if it is satisfied

ESTOPPEL—continued.**1. STATEMENTS AND PLEADINGS—continued.****Fraudulent statement—continued.**

that the transaction is not a *bona fide* one. **RAM SARUN SINGH v. PRAN PIAHRE**. 1 W. R., 156

Affirmed by P. C. in **RAM SURUN SINGH v. PRAN PIAHRE**

[15 W. R., P. C., 14: 18 Moore's I. A., 551

35. — Statement in former suit to defeat claim.—*Benami transaction to defeat creditors*.—*Proof of true nature of transaction*.—Where the lower Appellate Court did not allow a defendant in the present suit to deny the truth of admissions made by her in a former case, or to adduce evidence of her own falsehood and deceit, it was deemed to have acted in opposition to the ruling of the Privy Council in a case in which a statement previously put forward in a Court of Justice with a view to defeat the claim of the plaintiff was held to be no estoppel to the party's showing the real truth of the transaction. Even where the object of a benami transaction is to obtain a shield against a creditor, the parties are not precluded from showing that it was not intended that the property should pass by the instrument creating the benami, and that in truth it still remained with the person who professed to part with it. **DEBKA CHOWDHRAIN v. BIMALA SOONDVEREE DEBIA**. 21 W. R., 422

GOPEENATH NAIK v. JODOO GHOSH

[23 W. R., 42

See **RAM SURUN SINGH v. PRAN PIAHRE**

[15 W. R., P. C., 14: 18 Moore's I. A., 551

UDAY KUNWAR v. LADU

[6 B. L. R., 288: 15 W. R., P. C., 16
18 Moore's I. A., 588

BYKUNT NATH SEN v. GODOOLAH SIKDAR

[24 W. R., 391

ASHBUT SIRDAR v. BHUBO SOONDVEREE

[25 W. R., 40

See **MUKUN MULLICK v. RAMJAN SIRDAR**

[9 C. L. R., 64

and cases there cited.

36. — Entry in settlement papers.

—*Persons not parties to administration paper*.—*Held* that a cultivator is not bound by a condition entered in the village administration paper, to which he was no party. **MEHUR ALI v. KUNHYE**

[1 Agra, Rev., 13

CHUNDUN SINGH v. NIETO

3 Agra, 11

GIRDHARE LALL v. OOMRAO SINGH

[3 Agra, 249

37. — Return of income tax.—*Income Tax Act, XXXII of 1860, s. 97, rule 4*.—*Perpetuity of tenure*.—Under rule 4, section 97 of the Income Tax Act (XXXII of 1860), a return made to the Income Tax Officer is not conclusive evidence against the party making it upon the point of perpetuity of tenure. **JOWAHIR LALL v. POO-KURUM SINGH**. 6 W. R., 253

ESTOPPEL—continued.**1. STATEMENTS AND PLEADINGS—continued.**

38. ———— **Petition submitting account of income.**—*Act IX of 1869, s. 19.*—*False statement of income.*—A petition submitting the schedule of his income, filed by a petitioner in the Income Tax Office, is admissible as evidence against the person submitting and subscribing it; but it is not conclusive, and a false statement made in it, though it may render the petitioner amenable to a prosecution under Act IX of 1869, section 19, does not estop the person verifying the petition from proving that he made the statement to evade the income tax, and that the fact was otherwise than as stated. **GREEDHARNE SINGH v. FOOLJURNE KOORE**

[24 W. R., 173]

2. LANDLORD AND TENANT, DENIAL OF TITLE.

39. ———— **Parol evidence to prove different title from that in lease.**—*Suit for rent.*—*A.* executed a kabuliat for a term of years to *B.* as zemindar. *B.* gave a putni of the zemindari to *C.* *C.* instituted a suit for arrears of rent under the lease for a term of years against *A.*, the lessee. *A.*, in defence, admitted the execution of the lease to *B.*, but denied that *B.* was his real lessor and beneficially entitled to the rent, alleging that *B.* was only a benamidar for a third party. *Held* that in India the English doctrine of estoppel did not apply, and that *A.* was competent in a suit for rent to deny his lessor's title as stated in the lease, and by parol evidence to prove a different title to that recited in the lease. **DONNELLY v. KADERNATH CHUCKERBUTTY**

[7 B. L. R., 720: 16 W. R., 186]

But see **JAINARAYAN BOSE v. KADUMBINI DAS** 7 B. L. R., 723, note

40. ———— **Evidence Act, s. 116.**—*Landlord and tenant.*—Section 116 of the Evidence Act does not debar one who has once been a tenant from contending that the title of his landlord has been lost or that his tenancy has determined. It precludes him only during the continuance of the tenancy from contending that his landlord had no title at the commencement of the tenancy. **AMMU v. RAMAKRISHNA SASTRI** 1 L. R., 2 Mad., 226

41. ———— **Denial by tenant of his landlord's title.**—*Ejectment, Suit for.*—In a suit to eject a tenant holding over after the expiration of his lease, it is not competent to the tenant to set up that his landlord, the plaintiff, holds under an invalid lakhiraj tenure, and that the zemindar and not the plaintiff is entitled to the land. **MOHESH CHUNDER BISWAS v. GOOROOPRASAD BOSE**

[Marsh., 377: 2 Hay, 473]

42. ———— **Regular suit by tenant.**—If the existence of a tenancy be established by the fact of the tenant's payment of rent to his landlord or otherwise, the tenant cannot ordinarily dispute the title of his landlord in a suit brought against him for recovery of possession. He must first give up possession, and then, if he has any title *alivande*, that title may be tried in a suit of ejectment

ESTOPPEL—continued.**2. LANDLORD AND TENANT, DENIAL OF TITLE—continued.**

Denial by tenant of his landlord's title—continued.

against the landlord. **VASUDH V. DAJI v. BARAJI RANU** 8 Bom., A. C., 175

43. ———— **Denial of title as holding under unregistered document.**—*Admission of landlord's right.*—Where a tenant has repeatedly acknowledged that a person in possession of the proprietary right was entitled to receive rent, and has in fact attorned to him, he cannot afterwards be allowed to question the validity of the title of such person on the ground that the instrument by virtue of which possession of the proprietary right had been obtained was unregistered. **SHUMS AHMUD v. GOOLAM MOHRE-OD-DEEN** 3 N. W., 153

44. ———— **Denial by tenant of landlord's title.**—*Evidence Act (I of 1872), s. 116.*—*Derivative title.*—*A.*, a ryot, being in possession of a certain holding, executed a kabuliat regarding this holding in favour of *B.* (who claimed the land, in which the holding was included, under a derivative title from the last owner), and paid rent to *B.* thereunder. *Held* that *A.* was not estopped by section 116 of the Evidence Act from disputing *B.*'s title. The words "at the beginning of the tenancy" in section 116 of Act I of 1872 only apply to cases in which tenants are put into possession of the tenancy by the person to whom they have attorned, and not to cases in which the tenants have previously been in possession. **LAL MAHOMED v. KALLANUS**

[1 L. R., 11 Cal., 519]

45. ———— **Denial of right of fishery in river.**—*Licenses on payment of rent of fishery in navigable river.*—*Suit for ejectment.*—In an ejectment suit in respect of a julkur in a navigable river, the defendant, if he has paid rent to the plaintiff or his predecessors, is precluded from raising a defence that the plaintiff cannot have an exclusive right of fishery in a navigable river. **GOUB HARI MAL v. AMIRUNNESSA KHATOON** 11 C. L. R., 9

46. ———— **Denial of title of person supposed to be landlord.**—*Payment of rent.*—*Title.*—In a suit for rent by a putnidar, who claimed under a lease granted him by a Hindu widow, whose husband had left a will giving her no power to alienate,—*Held* that, although it was shown that the widow had been in receipt of rents, the suit was rightly dismissed. One who pays rent to another, believing him to be the landlord's representative, is not estopped from afterwards showing the want of title in that other: so here the defendant was not estopped from showing that, under the deceased husband's will, the plaintiff had no title. **BANEE MADHUB GHOSH v. TRAKOORDAS MUNDUL**

[B. L. R., Sup. Vol., 538: 6 W. R., Act X, 71]

TILLESURE KOOR v. ASMEDH KOOR

[24 W. R., 101]

ESTOPPEL—continued.**2. LANDLORD AND TENANT, DENIAL OF TITLE—continued.**

47. ——— Application for tenure to Collector under wrong impression.—Liability for rent.—Where application is made to a Collector for a tenure liable to pay revenue on account of an estate which applicant has carved out of unoccupied waste, and it is found that Government is not in a position to create such a tenure, the applicant is not bound by his offer made under an erroneous impression, nor is he estopped thereby from pleading as against the landlord that he is not liable to pay any rent. *BEIJONATH CHOWDEY v. LALL MEAH MUNNEPOOREE* **14 W. R., 391**

48. ——— Denial in former suit of relationship of landlord and tenant.—Suit for possession.—A rent suit having been dismissed upon defendant denying that he was a tenant of the plaintiff, the latter sued the former for khas possession. *Held* that, after his former denial, defendant could not now claim a settlement and refuse the khas possession sought. *SONAOOLLAH v. IMAMOODDEEN* **[24 W. R., 273]**

DABEE MISSEER v. MUNGUR MEAH **[2 C. L. R., 208]**

49. ——— Payment of rent, Suit to contest title after.—Payment under erroneous impression.—The plaintiffs were the registered holders of the village of Mahkoli, in the Ahmedabad Collectorate, for which they obtained a sanad in 1864, under Bombay Act VII of 1863. The defendants were the descendants of the original owners of the village, who, about 1768, finding themselves unable to meet the expenses attaching to the village, gave up their title to it to the ancestors of the plaintiffs, on condition of retaining a third of the lands rent free as their *vasta* or share, subject to no other condition but a house tax. *Held* that the circumstances did not constitute the relationship of landlord and tenant between the parties. The fact that the defendant had for some years paid to the plaintiffs part of the amount of quit-rent levied from the plaintiffs by Government, did not estop the defendants, when better informed of their rights, from contesting the title of the plaintiffs to any further payments. *JESINGBHAI v. HATAJI* **1 I. L. R., 4 Bom., 79**

50. ——— Acceptance of lease under coercion.—Payment of rent.—A person accepting a lease under coercion is not bound by such acceptance, nor do payments of rent by him to the person granting the lease estop him from questioning the title of the payee, unless the payee let him into possession. Even then the effect of the payment as an estoppel would be confined to the title of the payee at the time possession was given. *COLLECTOR OF ALLAHABAD v. SURAJ BAKSH* **6 N. W., 383**

3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

51. ——— Deed, Construction of.—Those who rely upon a document as an estoppel must clearly establish its meaning; if there is any ambiguity, the

ESTOPPEL—continued.**3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—continued.****Deed, Construction of—continued.**

construction may be aided by looking at the surrounding circumstances. *MHWA KUWAR v. HULAS KUWAR* **[13 B. L. R., 312: L. R., I. A., 157]**

52. ——— Statement in bond.—Evidence of amount of consideration actually received.—Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash,—*Held* that it was open to the defendant to show by evidence that only a portion of the principal sum had been received by him. The strict technical doctrine of English law as to estoppels in the case of deeds under seal does not apply to the written instruments ordinarily in use amongst the natives of India. *GAUREVALLABA RAMCHANDRA BOMAYA NAYIK v. VIRAPPA CHETTI* **2 Mad. Rep., 174**

53. ——— Stipulation in bond.—Proof of payment.—Omission to endorse payment.—A stipulation in a bond that all payments should be endorsed on the back thereof, and that all other pleas of repayment would be futile, does not estop the defendant from proving by other means that the debt, or part of it, has been satisfied. *KALKE DOSS MITTRA v. TARACHAND ROY* **8 W. R., 316**

See GIRDHAREE SINGH v. LALLOO KOONWUR **[3 W. R., Mis., 23]**

NARAYAN UNDIR PATIL v. MOTILAL RAMDAS **[1 I. L. R., 1 Bom., 45]**

54. ——— Agreement of parties.—Irregular procedure, Agreement to be bound by.—Where a Court has a general jurisdiction over the subject-matter of a claim, parties may be held to an agreement that the questions between them should be heard and determined by proceedings contrary to the ordinary *curious curia*. *SADARIVA PILLAI v. RAMALINGA PILLAI* **[15 B. L. R., 383: 24 W. R., 193]**

L. R., 2 I. A., 319

SHEO GOLAM LALL v. BENI PROSAD **[1 I. L. R., 5 Cal., 27: 4 C. L. R., 29]**

55. ——— Agreement to abide by punchayet.—Proceedings to show decision of punchayet inequitable.—An agreement between the parties to abide by the determination of a punchayet fixing the line of boundary, and the determination of the punchayet, were held to be not conclusive evidence so as to bar either party from showing the determination of the punchayet to be inequitable. *MOUDDIMS OF MOUZA KUNKUNWADEY IN PERGUNNAH JAMU-CUNDI v. THE EMAMDAR BRAMHINS OF MOUZA SOORPAL* **[7 W. R., P. C., 8: 3 Moore's L. A., 383]**

56. ——— Effect of valid award on reference to arbitration.—Defence of submission to arbitration and award upon the matter in suit before suit brought.—An award upon a question re-

ESTOPPEL—continued.**3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—continued.****Effect of valid award on reference to arbitration—continued.**

ferred to arbitrators on whose part no misconduct or mistake appears, concludes the parties who have submitted to the reference from afterwards contesting in a suit the question so referred and disposed of by the award. Two widows of a deceased Hindu referred generally to arbitrators the question of their rights, respectively, in the estate of their deceased husband, including the matter whether there was, or was not, any cause disentitling the widow who afterwards brought this suit for her share in the estate against the other who had obtained possession of the whole. The arbitrators declared her to be disentitled to succeed to any portion of the estate, and awarded her maintenance only. *Held* that, in the absence of mistake or misconduct on the part of the arbitrators, the award was binding on the parties. **BHAGOTI v. CHANDAN**

[I. L. R., 11 Calc., 386; L. R., 12 I. A., 67]

57. ——— Contract.—construction of agreement to refer.—Breach of contract.—The plaintiffs, on the 4th August 1881, entered into a contract with the defendant for the sale to the latter of a quantity of goods of a certain description "to be delivered up to the 31st December 1881." The plaintiffs stipulated that they would make no sales of goods of the same description to others before 1st December 1881; and the contract contained an arbitration-clause to the effect that "if the buyers object to accept all or any of the goods offered to them by the sellers in fulfilment of the contract on the ground of any variance, difference from the sample or muster, inferiority in weight or quality or colour, or damage or defect, or any other ground whatsoever," such objections should, in case of disagreement, be referred to two arbitrators, one to be named by the sellers, and the other by the buyers. Such arbitrators to decide "whether the buyers' objections were valid, and if so, what allowance on the whole contract price will be a reasonably adequate compensation to the buyers for such variance, difference, inferiority, damage, or defect, if any, and such decision shall be final and binding on both parties." If either buyers or sellers failed "to name an arbitrator within two days after being requested by the other to do so, the decision of the arbitrators named by the buyers or sellers, as the case may be, shall be final and binding on both parties." The goods arrived in Calcutta between the 4th and 24th November 1881. On the 15th August the plaintiffs entered into other contracts with other buyers for the sale of the same description of goods at a lower price than that at which they had sold to the defendant; these contracts were on the terms that the goods were not to arrive in Calcutta until after the 31st December 1881. The defendant refused to accept the goods, on the ground that the plaintiffs had committed a breach of the contract by entering into other agreements for sale of the same description of goods before the 1st December, and refused to pay the difference between the contract price and the market value which the plaintiffs demanded from

ESTOPPEL—continued.**3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—continued.****Effect of valid award on reference to arbitration—continued.**

him. The plaintiffs thereupon appointed an arbitrator, who (the defendant declining to appoint an arbitrator) proceeded to act in the matter, and, finding that the plaintiffs had not committed a breach of the contract, made an award in their favour for Rs50, the difference in price of the goods at the contract and market values. The plaintiffs sued to recover the amount due to them under the award, or in the alternative for Rs50 as damages for non-acceptance of the goods. *Held* that the defendant was not estopped by the award from setting up the breach of the stipulation not to sell other goods of the same description before the 1st December 1881 as a defence to the suit. *Per GARTH, C. J.*—The question whether the plaintiffs, by making the other contract, had committed a breach of the stipulation, was not properly a subject of reference to the arbitrator under the arbitration clause. The general words in that clause, "or any other grounds whatsoever," mean any other grounds of a like character, and do not include a pure question of law. **CARLISLES, NEPHEWS & Co. v. RICKNAUTH BUCKENHALL**

[I. L. R., 8 Calc., 809]

58. ——— Agreement not to execute under terms.—Order in conformity with agreement.—Where the parties to a suit have by natural agreement made certain terms and informed the Court of them, and the Court has sanctioned the arrangement and made an order in conformity with it, and the agreement has been acted upon, neither party is at liberty to resile from it. The question whether such an agreement does or does not violate the rule that a Court cannot add to its decree, becomes under the circumstances one which the Court will not enter into; the party who seeks to raise such question being estopped by his own conduct, and the action of the Court taken thereunder. **SEHO GOLAM LALL v. BENI PROSAD**

[I. L. R., 5 Calc., 27; 4 C. L. R., 29]

59. ——— Benami leases.—Lease in name of wife.—Showing true nature of transaction.—*Held*, that it would be very inequitable that there should be anything in this country of the nature of the old English doctrine of estoppel by deed. A party giving a kabuliast nominally in favour of A. is not estopped from pleading that he did not contract with A. at all, and that he did not obtain the leased premises from her, but that she knew nothing of the transaction, her name being used merely as a matter of convenience between the lessee and her husband. **KEDARNATH CHUCKERBUTTY v. DONZELLE**

[20 W. R., 352]

60. ——— Admission of validity of deed.—An admission by an adoptive mother, in a suit brought by her mother-in-law to set aside the adoption, that an alleged unomuttee-puttar under which her mother-in-law had previously professed to adopt a son to her deceased husband was valid, would not estop her adoptive son from denying the validity

ESTOPPEL—continued.**3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—continued.**

Admission of validity of deed—continued.
of that instrument, in a suit subsequently brought by him for the assertion of his rights under the adoption. **ANNUNDMOY CHOWDHRAI v. SHREE CHUNDER ROY** **Marsh, 455**

61. ——— Admission of execution of deed.—Contest as to validity.—The mere fact of a person having in a previous suit admitted the execution of a deed, did not preclude her from contesting its validity and maintaining that it was a colourable and not a real conveyance. **USHEEPOONESSA BEGUM v. GHIDHARRIE LALL**

[19 W. R., 118]

62. ——— Agreement not to execute decree.—Wrongful execution in breach of agreement.—Deed of conditional sale.—Defeating claims of third persons.—Maxim, “In pari delicto potior est conditio possidentis.”—The plaintiff sued in 1875 to recover possession of immoveable property which the defendant had obtained in 1873, in execution of an *ex parte* decree dated the 8th June 1861. That decree was founded on a deed purporting to be a deed of conditional sale dated the 24th December 1853 executed by the plaintiff in favour of the defendant. The plaintiff alleged that the deed was executed in order to protect the property against the claims of plaintiff's son, and the plaintiff sought to set it aside on account of defendant's breach of an agreement dated the 16th January 1856, whereby the defendant stipulated that plaintiff's possession should not be disturbed. The defendant, *inter alia*, pleaded estoppel. *Held*, that plaintiff was not estopped from showing the real truth of the transaction between plaintiff and defendant, and from obtaining relief through the Court against defendant's breach of good faith, because of plaintiff's attempt to hinder or defeat the possible claim of a third party, the maxim, “*In pari delicto potior est conditio possidentis*,” not being applicable without qualification to India, where justice, equity, and good conscience require no more than that a party should be precluded from contradicting, to the prejudice of another, an instrument pretending to the solemnity of a deed, when the parties claiming under it or their representatives have been induced to alter their position on the faith of such instrument. **PARAM SINGH v. LALJI MAL**

[I. L. R., 1 All., 403]

63. ——— Benami conveyance.—Relation of landlord and tenant.—The plaintiff having sued to obtain possession of certain land which the defendant held as tenant, and in respect of which he had for some years paid rent, the defendant alleged that, prior to the time when he became tenant, the plaintiff had for good consideration conveyed to him the premises leased, together with other property. This conveyance was found to be a mere benami transaction. *Held* that the plaintiff was not estopped from asserting the tenancy, and under the circumstances was entitled to recover. **SABUKTULLA v. HARI** **10 C. L. R., 199**

ESTOPPEL—continued.**3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—continued.**

64. ——— Mortgage fraudulently made to defeat execution of decree.—Right of mortgagor to sue subsequently to recover possession.—In 1851 *T.* obtained a decree against *G.*, the father of the plaintiff. In order to defeat the execution of that decree, *G.*, in collusion with one *B.*, permitted the latter to obtain a decree based upon an award against him, and to sell the land in execution, at which sale *B.* himself and another person purchased it. In 1857 these purchasers sold the property to *V.* (defendant No. 1). In 1858 *T.* attached the land in execution of his decree, but the attachment was raised on the application of defendants Nos. 1 and 3, who alleged that the property was theirs. In 1876 the plaintiff, who was the son of *G.*, sued the defendants to recover possession. He alleged that the transaction was only ostensibly a sale, but was really a mortgage made by his father to the defendants, and that the defendants held as mortgagees. Two documents were produced (exhibits 19 and 18), dated respectively in the years 1855 and 1862, whereby defendant No. 1 as a mortgagee acknowledged the receipt of two sums of Rs75 from *G.* It further appeared that on the faith of exhibit 18 the defendants had been permitted to remain in possession for ten years without disturbance as mortgagees. The subordinate Courts held that the decree, sale, and re-sale of the lands were fraudulent and collusive transactions, and that *G.* having been a party to the fraud, the plaintiff could not recover the lands from the defendants. On appeal,—*Held* that the plaintiff was entitled to recover; that the defendants having accepted repayment of Rs750 as mortgagees, and, as such, having been permitted to remain in possession of the lands without disturbance, were estopped from setting themselves up as purchasers or owners, which false character had been merely assumed for the purpose of defeating the execution of the decree obtained by *T.* **MAHADAJI GOPAL BAKLAKAR v. VITRAL BALLAL** [I. L. R., 7 Bom., 78]

65. ——— Mortgage without being owner of property.—Subsequent ownership by mortgagor of the same property.—Auction-purchaser.—Validity of mortgage.—In 1871, *M.*, the mortgagee of certain property, styling himself the owner of it, mortgaged it to *S.* In 1875 *M.* became the owner of such property by purchase. In 1877 such property was put up for sale in execution of a decree against *M.*, and *A.* purchased it. *S.* subsequently sued *M.* and *A.* to enforce the mortgage of such property to him by *M.* *Held* that, inasmuch as, if *S.* had at any time sued *M.*, to enforce such mortgage after he had become the owner of the mortgaged property, and before *A.* had purchased it, *M.* would have been estopped from denying the validity of such mortgage, and as there was nothing fraudulent in such mortgage, and *A.* had purchased with a knowledge of the facts, after *M.* had become the owner, *A.* was estopped from denying the validity of such mortgage, and the mortgaged property was liable in his hands to *S.*'s claim. **SEVA RAM v. ALI BAKSH** **I. L. R., 3 All., 805**

ESTOPPEL—continued.**3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—continued.**

66. ——— Declaration in deed of sale.—*Admission.*—The mere fact of a vendor declaring in her deed of sale of a moiety of a landed estate that she was the proprietor only of that moiety, and that the other moiety belonged to her deceased sister's son, was held not to be conclusive evidence against her being proprietor of the other moiety, nor to injure the right of a purchaser from her of such moiety. **NUMHOO SAHOO v. BOODHOO JUMMADUR** [13 W. R., 2

67. ——— Statement in deed of Assignment.—*Evidence of knowledge of alteration is purpose of assignment.*—The plaintiffs received an assignment of debt due to a third person not a party to the suit. The document assigning the debt showed on the face of it that the assignment was an absolute payment to the plaintiff, and evidence went to show that such payment was in part payment of a debt due from the defendants to the plaintiff. *Held* that, in default of evidence to show that the defendants were aware of any intended alteration in the apparent purpose of the assignment, the plaintiff was precluded from saying that he had received it in any other light. **SCINDIA, PUNJAB, AND DELHI BANK v. MUDHOOSOODUN CHOWDERY**

[Bourke, O. C., 322

68. ——— Recital in kobala.—Title, Proof of.—Variance between Pleading and Proof.—A. claimed certain property from B., the daughter of C., on the ground that on the death of C. it had descended to D. as the heir of C., and produced a kobala containing a recital that on the death of C., who had died childless, it had descended to D. *Held* that A. was not estopped from proving that C. had left a son, E., who survived him, and that D. was entitled to the property as E.'s heir, and that D.'s heir could give the title to such property. **GOUB MONEE DEBRA v. KRISHNA CHUNDER SANNYAL**

[I. L. R., 4 Cal., 397

69. ——— Parties to suit both deriving title from same document.—Question of validity of document.—Suit for possession.—The plaintiff sued the defendant to recover a sum of money by attachment and sale of certain property in the legal possession of the defendant. Both the plaintiff and the defendant professed to derive their title by virtue of a document which the Court found was invalid according to Mahomedan law. *Held* that the defendant was not estopped from denying its validity, and the Court was not bound to hold that the document, as between the parties, was valid. The defendant being in possession, it was for the plaintiff to establish her right to attach and sell the property by showing superior title in herself, whatever might be the rights of the defendant. **KUWARBAI v. MIR ALAM KHAN I. L. R., 7 Bom., 170**

70. ——— Rights of transferee of sub-lessee.—Lease, Construction of.—Right to deny validity of lease.—A Government farmer of a village (the farm being for his life) sub-leased it, and the

ESTOPPEL—continued.**3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—continued.****Rights of transferee of sub-lessee—continued.**

sub-lessee, in consideration of a certain sum, made a perpetual lease in favour of the defendant at a certain annual quit-rent. Subsequently the proprietary settlement of the village (the possession being conditional on expiry of farm) was made with the sub-lessee, whose proprietary rights having been sold at auction were purchased by the plaintiff, who sued to set aside the lease. *Held*, on the construction of the lease, that the proprietor professed it to be a perpetual lease, without reference to its determination on the expiry of the sub-lease, and that the auction-purchaser, being the *locum tenens* of the person whose rights he purchased, was estopped, as would have been the latter, from questioning the validity of the lease in favour of the defendant. **KYAN CHOWDERY v. JANKES PIESAD** . . . 1 Agra, 184

71. ——— Acquiescence.—Right of Hindu widows.—Effect of alienation of interest in subject of suit.—A Hindu dying intestate left two widows (D. and M.) as his co-heiresses. A document put forward by a third party (H.) as a will of the deceased having been set aside by the Courts, an order was passed in a summary suit, under Act XIX of 1841, by which the property was equally divided between the widows. One of them (D.) subsequently died, leaving a will disposing of her share to her relatives. Steps were taken during D.'s life by the other widow (M.) and by H. to resist the registration of the will; and after D.'s death M. applied for the attachment of D.'s share, and the appointment of a curator. Her application being dismissed, she commenced a regular suit. *Held*, that M.'s original acquiescence in the title set up by H. did not deprive her of any rights which accrued to her as one of the co-heirs of her husband when that claim was decided to be untenable, nor could her alleged alienation of her share bar her present suit. **BRUGWANDEN DOBRY v. MYNA BARR [9 W. R., P. C., 23: 11 Moore's L. A., 487**

72. ——— Solehnamah, Effect of.—Finding by Judge on remand.—Special appeal.—In a case which was remanded to be tried on its merits, the remanding Judges being of opinion that it was not barred, the Additional Judge of the zillah adhered to his former opinion, that the plaintiff's claim was barred by limitation; but found as a fact that she had been a party to a solehnamah and other acts by which she was estopped from her present claim. *Held* that the additional Judge was wrong in entering again into the question of limitation; but that his finding of fact could not be interfered with in special appeal, and that the plaintiff was barred by the solehnamah from maintaining this suit. **Brugwan Deen Dobey v. Myna Bae, 9 W. R., P. C., 23, distinguished. **JUDOONBUNES KOORE v. ASMAN KOORE** 14 W. R., 370**

73. ——— Objection of minority raised after completion of purchase and possession by vendees.—The vendees in a suit to enforce a right of pre-emption set up as a defence

ESTOPPEL—continued.**8. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—continued.****Objection of minority raised after completion of purchase and possession by vendees—continued.**

to the suit that the sale was invalid, on the ground that they were minors, and therefore incompetent to contract. *Held* that, as they had paid their money to the vendor and the conveyance had been perfected, and they were in possession of the property, they were estopped from urging such ground. **KHEM KARAM v. HAR DAYAL** . I. L. R., 4 All., 87

74. ———— Plea of non-liability to pre-emption of property acquired by pre-emption.—The fact that a property has been acquired under a claim of pre-emption does not estop the person who has acquired it from pleading that the right of pre-emption did not extend to such property. **SALIG RAM v. DEBI PARSHAD** . 7 N. W., 38

75. ———— Signature on blank bond.—*Blank stamped paper.*—Where a person chooses to entrust to his own man of business a blank paper duly stamped as a bond and signed and sealed by himself, in order that the instrument may be duly drawn up and money raised upon it for his benefit, if the instrument is afterwards duly drawn up and money obtained upon it from persons who have no reason to doubt the *bona fides* of the transaction, it must, in the absence of any evidence to the contrary, be taken that the bond was drawn in accordance with the obligor's wishes and instructions. **WAHIDUN-NISSA v. SURGADASS** . I. L. R., 5 Cal., 89

76. ———— Destruction of document.—*Omnis præsumitur contra spoliatores.*—In a suit brought against a Collector to compel him to refrain from preventing the plaintiff executing his decree against certain land, the only issue being whether the land was the private property of the judgment-debtors or Government service land, the plaintiff alleged that the land had been granted in fee mainly by a sanad which he petitioned the mamlatdar of the pergunnah to search for and send to the Collector; and on reference by the High Court, the District Judge found that the Collector did destroy the document that purported to be a copy of a sanad, such as the plaintiff petitioned the mamlatdar to send for. *Held* that it was not competent for the defendant to say that the document was not such a one as could be legally admitted in evidence, and that the case came within the rule, *Omnis præsumitur contra spoliatores*. **ARDESHIR DHANJIBHAI v. COLLECTOR OF SURAT** . 3 Bom., A. C., 116

4. ESTOPPEL BY JUDGMENT.

77. ———— Civil Procedure Code, 1882, s. 13 (1859, s. 2).—The doctrine laid down in the *Duchess of Kingston's case* as to estoppel by judgment, is applicable to cases tried under the Civil Procedure Code, section 2 of which is consistent with that rule. **KHUGOWLEE SINGH v. HOSSEIN BUX KHAN** . 7 B. L. R., 367: 15 W. R., P. C., 80

ESTOPPEL—continued.**4. ESTOPPEL BY JUDGMENT—continued.**

78. ———— Decree.—*Difference between decree and agreement on which it was based.*—So long as a decree subsists unrevoked and unvaried, the parties thereto and those claiming under them are bound by it, and no effect can be given to any prior agreement regarding the same matter on the ground that the terms of the decree differ from those of the prior agreement, notwithstanding that the parties had requested the Court which passed the decree to draw it up according to the terms of the agreement. **JANKIBAI v. ATMARAM BABURAY**

[8 Bom., A. C., 241]

79. ———— Decree in suit on kabuliati.—*Subsequent suit on same kabuliati.*—A suit for rent was brought against the guardian of a minor, and the Court gave a decree founded on a kabuliati given by the ancestor of the minor. After the minor had come of age, a suit was brought against him for subsequent arrears under the kabuliati. *Held* that he was estopped by the decree in the former suit from denying the validity of the kabuliati. **TARI-NERPERSAUD GHOSH v. SUREGOPAL PAUL CHOWDHRY** . **Marsh, 476: 2 Hay, 593**

80. ———— Dismissal of suit on failure to prove kabuliati.—*Pleadings, Admission in statement is.*—Plaintiff sued before on a kabuliati of 1864, and did not admit in his plaint that he had cancelled a former kabuliati of 1862, but merely alleged that the defendant had executed the kabuliati of 1864, which recited that the kabuliati of 1862 had been voluntarily cancelled by the defendant. The defendant denied the kabuliati of 1864, and the plaintiff having failed from inability to prove it, was not estopped now from suing on the kabuliati of 1862, and saying that that kabuliati was not legally cancelled by him. **DOYNE v. KHOODEE RAM MUNDUL** . 5 W. R., S. C. C. Ref., 16

81. ———— Decision of genuineness of documents.—An affirmation in general terms of the right of a plaintiff in a suit, which was based in some measure upon certain documents, is not such a decision between the parties as precludes the defendant from raising a question as to the genuineness of these documents in a subsequent suit between the same parties. **HURREHUB MOOKERJEE v. OOMA MOYEE DOSSEE** . 12 W. R., 525

82. ———— Order for execution of decree without notice to judgment-debtor.—A judgment-debtor, against whom an order for execution has been obtained behind his back, is not estopped from afterwards contending that there exists no decree which can be executed. **ISHWARDAS JAGJIVAN DAS v. DOSIBAI** . I. L. R., 7 Bom., 316

83. ———— Order disallowing objections to attachment.—*Civil Procedure Code (1859), s. 246 (1879), s. 283.*—*L.* in execution of a decree against *S.*, a member of an undivided Hindu family, for a personal debt, attached the interest of *S.* in certain lands alleged to be the joint property of the family of *S. K.* intervened and objected to the attachment on the ground that the property was not

ESTOPPEL—continued.**4. ESTOPPEL BY JUDGMENT—continued.****Order disallowing objections to attachment—continued.**

family property or partible. The objection was disallowed under section 246 of the Code of Civil Procedure (Act VIII of 1859). No suit was brought by *K.* within one year from the date of the order, but *L.*, who purchased the right of *S.* in the lands attached and sold, did bring a suit within a year from the date of the order to obtain what he had bought at the Court sale from *K.* and others. *Held* that *K.* was estopped from again pleading that the same property was not family property or partible. *BAILBUR KRISHNA RAU v. LAKSHMANA SHANBHOGUE*

[I. L. R., 4 Mad., 302]

84. ——— Civil Procedure

*Code, 1859, s. 246, Rejection of claim under.—Limitation.—Adverse possession, Plea of.—*An order passed under section 246 of the Code of Civil Procedure, 1859, rejecting a claim after investigation, will, if not contested by suit by the claimant, estop him afterwards from pleading adverse possession at the date of the order in a suit brought to eject him by the decree-holder. *VELAYUTHAN v. LAKSMANA*

[I. L. R., 8 Mad., 506]

85. ——— Civil Procedure

*Code (Act VIII of 1859), s. 246.—Civil Procedure Code (Act XIV of 1859), ss. 281, 283.—Limitation Act (XV of 1877), sch. II, art. 11.—Limitation Act (IX of 1871), sch. II, art. 15.—Suit for possession.—*In certain execution proceedings land was attached, but before the sale the judgment-debtors, with the permission of the Court, sold the land to the plaintiffs. Previous to this sale, certain persons had come forward in the execution proceedings, and had claimed the land as having been sold to them by the father of the judgment-debtors; this claim was disallowed in November 1876. In 1881 the plaintiffs, alleging that they had been dispossessed by certain persons, amongst whom were the claimants in the execution proceedings, brought a suit to recover possession of this land against these persons. This suit was decided against the plaintiffs in the lower Appellate Court, on the ground that they had failed to prove that they had been in possession of the land twelve years before suit. On appeal to the High Court, the plaintiffs, appellants, contended that the claim of the defendants in the execution proceedings having been rejected, and they not having brought a regular suit within one year from the order of rejection to establish their right to possession, the defendants were prevented by that order from contending that the plaintiffs had not been in possession at the time of that order. *Held* that the order did not operate as an estoppel against the defendants; and even if it could so operate, it would not do so until the time had run out within which they could have brought a suit to establish their right to possession, and that such time had not expired. *GRIND LALL TEWARI v. DEONATH RAM TEWARI*. I. L. R., 11 Cal., 673

86. ——— Construction of decree made in order in execution proceedings.—Finality of such order.—Omission to appeal against order.—

ESTOPPEL—continued.**4. ESTOPPEL BY JUDGMENT—continued.****Construction of decree made in order in execution proceedings—continued.**

A Court having jurisdiction decided in the course of execution proceedings (in an order which was not appealed), that the decree to be executed awarded *mesne profits* according to its true construction. *Held* that this decision had become final between the parties, not under section 13 of Act X of 1877, but upon general principles of law, as an interlocutory order in the suit. The order construing the decree having been made in the same suit in which the application was made, the question whether the law of "*res judicata*" applied was not relevant, that term referring to a matter decided in another suit. *RAM KIRPAL v. RUP KUARI*

[I. L. R., 6 All., 269; I. L. R., 11 I. A., 37]

87. ——— In reference to an application for execution of a decree, a Court made an order between the parties construing the decree to award interest at a certain rate till payment. *Held*, that no contrary construction could be placed upon the decree in a subsequent application in the execution proceedings. *Ram Kirpal v. Rup Kuari*, I. L. R., 6 All., 269, referred to and followed. *BENI RAM v. NANHU MAL*

[I. L. R., 7 All., 102; I. L. R., 11 I. A., 181]

88. ——— Decree in suit to set aside adoption.—Reversioner.—Quare.—Whether a decree in favour of the adoption passed in a suit by a reversioner to set aside an adoption is binding on any reversioner except the plaintiff; and whether a decision in such a suit adverse to the adoption would bind the adopted son as between himself and any other than the plaintiff. *JUMONA DASIA v. RAMASOONDARI DASIA*

[I. L. R., 1 Cal., 289; 25 W. R., 235
I. L. R., 3 I. A., 73]

89. ——— Effect of decree appealed from after compromise on appeal.—Limit of rule.—No bar to persons contesting inter se under a title derived from one of the original litigants.—An adoption having been held to be valid by the High Court on appeal from a Subordinate Court, an appeal to the Privy Council was preferred, when the parties entered into a compromise and the appeal was permitted to be withdrawn. *Held* that the decree of the High Court as to the validity of the adoption became final and was not affected by the compromise so as to allow the matter to be again litigated between the parties or their privies. Although the decision of a Court as to the validity of an adoption in a suit between *A.* and *B.* may, in any subsequent proceedings between *A.* and those claiming under him on the one side, and *B.* and those claiming under him on the other, estop the parties to such proceedings from again questioning the validity of the adoption, yet in a suit where both the contesting parties claim under *B.*, such decision will not operate as an estoppel so as to prevent the validity of the adoption being again questioned by either party to such suit. *VYTHILINGA MUPPANA v. VIJAYATHAMMAL*

[I. L. R., 6 Mad., 43]

ESTOPPEL—continued.**4. ESTOPPEL BY JUDGMENT—continued.**

90. ———— Decree in compromised suit.—*Purchaser pendente lite.*—A person who buys with her eyes open, *pendente lite*, cannot maintain a suit involving a revival and re-trial of the very question decided in her vendor's suit. **NADUBOONISSA BIBEE v. AGHUE ALI CHOWDHRY**

[7 W. R., 103]

91. ———— Decree in suit to impeach conditional sale.—*Purchaser from conditional vendor.*—The purchaser of the conditional vendor's interest pending the suit to impeach the conditional sale must be bound by the decree in that suit. **GHAZZER-ODDEN v. BROOKUN DOBBY** . 2 Agra, 301

92. ———— Decrees against sisters with life-interest in property of father.—*Effect of, on survivor.*—The survivor of several Hindu sisters is not bound by decrees obtained against her sisters during their lives, whose interest was only a life-interest in their father's property, which on their death passed to the survivor as heir of her father. **JOYGOBIND SOHOY v. MAHTAB KOONWAR**

[7 W. R., 1]

93. ———— Decree as to right of way.—*Effect of, as against auction-purchaser of lands in mortgage suit.*—A. brought a suit against B. to have it declared that B. possessed no right of way over his lands. This suit was dismissed, and B. obtained a decree establishing his right. Previous to the institution of this suit, A. had mortgaged the same lands to C. who, after the suit, caused the lands to be sold under his mortgage, and became the purchaser at the auction-sale. In a suit by C. against B. to have it declared that no such right of way existed over the lands, *Held* that C. was not estopped by the previous decision against A., his mortgagor, from again raising the question of the validity of the right of way over the said lands. **BONOMALEE NAG v. KOYLASH CHUNDER DEY** . . . 1 L. R., 4 Cal., 692

94. ———— Reliance by plaintiff on case in their favour subsequently reversed.—Where the plaintiffs appealed in both the lower Courts to the jurisdiction for the determination of a previous suit as evidence in their favour, and embodied it in their plaints as being a material particular of the cause of action which they proposed to establish, they were not allowed in appeal to the High Court to object to the reception by the lower Appellate Court of the judgment in question as evidence in the present cause, on the ground that they were not parties to that case, although the Judge, on review, reversed the judgment he had already passed in favour of these plaintiffs on the strength of the decision of the High Court which reversed the judgment in the previous suit on which the plaintiffs had relied. **PANIOTY v. PARBUTTY CHOWDHRAIN**

[8 W. R., 492]

95. ———— Decree in former unsuccessful suit.—*Raising same title as defence in subsequent suit.*—The fact that a person failed to establish a prescriptive title in a suit in which he was plaintiff, does not debar him from defending his

ESTOPPEL—continued.**4. ESTOPPEL BY JUDGMENT—continued.**

Decree in former unsuccessful suit—continued.

right of possession against another plaintiff suing him for the property. **SHERIDHAR VINAYAK v. BABAJI BIN JIVAJI** . . . 6 Bom., A. C., 230

96. ———— Suit for Wasilat after decree for possession.—*Setting up title of third party.*—In a suit for wasilat brought after a decree awarding possession to the plaintiff, the defendant cannot set up the title of a third person. **BENGAL COAL COMPANY v. DAREEMBAH DAHRA**

[Marsh., 105: 1 Hay, 181]

97. ———— Decision in former suit declaring putni sale valid.—*Claim is another form.*—Where a putni talook had been sold for arrears of rent, and certain persons, claiming to have been in possession of the superior zemindari rights in the estate, had sought on a former occasion to set aside the sale, but had failed, and now renewed the attempt, *Held* that, even if the claim of these persons to the zemindari rights had been proved, which was not the case, they could not now repeat their old suit against the putnidar in a new form: still less could they, after having always denied the existence of the putni talook, now claim in appeal to be its owners, if it existed. **HUBO NATH DASS v. ROMA NATH SURMA** . . . 25 W. R., 321

98. ———— Decree on disclaimer of title by defendant in written statement.—If one of the defendants in a suit for possession puts in a written statement disclaiming all interest in the property in suit and a decree is made by reason and on the faith of such disclaimer, the decree is valid against him and he is absolutely concluded by it so long as fraud is not proved. **RADHA KISHEN CHOWDHRY v. KOMUL SHAW** . . . 25 W. R., 128

99. ———— Decree by consent in former suit.—*Evidence Act, s. 115.*—*Suit for possession.*—Plaintiff alleged a purchase of land from A. and B. of which he afterwards granted them a pottah and retained them in possession, and he put in evidence a consent decree obtained against B. for arrears of rent. *Held*, in a suit brought to recover possession on the ground of the tenancy having expired, that the decree worked no estoppel against B. by virtue of section 115 of the Evidence Act, and did not relieve the plaintiff from the necessity of proving his case completely. **SOLDAR MONDUL v. NILCOMUL CHATTERJEA** . . . 1 C. L. R., 528

100. ———— Decree establishing joint liability.—*Suit for contribution.*—*Denial of liability.*—Where a joint decree, passed against several defendants, has been satisfied out of the property of one of them, and then a subsequent suit for contribution has been brought by the latter against her co-defendants in the former suit, there is nothing to prevent the defendants from showing that as between themselves and the plaintiff, the latter alone was liable to satisfy the decree in the former suit, and that consequently they are not liable to contribute. **ASMAN SINGH v. AJNAS KONE** . . . 2 C. L. R., 406

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT.**

101. ——— Representation made to and acted upon by party.—When a person wilfully induces another to believe the existence of a certain state of things, and to deal with him on the faith of it, he and those who claim under him are conclusively bound by the representation so made. **AMBER ALI v. SYET ALI** . . . 5 W. R., 289

BAHNEPERSHAD v. MAUN SINGH . 8 W. R., 67

102. ——— Evidence Act, 1872, s. 115.—Permitting person to believe in and act upon the truth of anything.—Section 115 of the Evidence Act, which contemplates a person "by his declaration, act, or omission intentionally causing or permitting another person to believe a thing to be true and to act on that belief," in which case he cannot "deny the truth of the thing," refers to the belief in a fact and not in a proposition of law. **RAJNARAIN BOSE v. UNIVERSAL LIFE ASSURANCE CO.**

[I. L. R., 7 Cal., 504
10 C. L. R., 561]

103. ——— Intention of parties as evidenced by their acts.—Execution of deed of partition.—Vendor and purchaser.—Whatever may be the real intention amongst themselves of some of the members of a Hindu joint family in executing a deed of partition, purchasers from them have an undoubted right to bind them by the execution of the deed and their public acts attending it, to the fulfilment of those obligations which such public acts cast upon them. **SUKHIMANI DAS v. MAHENDRO NATH DUTT**

[4 B. L. R., P. C., 16]

S. C. SOOKHEEMONH DOSSES v. MOHENDRO NATH DUTT . . . 13 W. R., P. C., 14

104. ——— False representations to induce others to contract.—Parties who by false representations induce others to enter into contracts, are estopped from afterwards falsifying their statements, and if necessary may be compelled to make them good. **RADHAKISHEN v. SHUREEFUNNISSA**

[W. R., 1864, 11]

105. ——— Conduct of complainant conducing to acts complained of.—Claim to relief.—If the person who asks for redress is a party who has countenanced the acts of which he complains, the Court is bound to refuse him any redress or assistance. **BIYEO DUTT v. LUKHRANEE KOOKER** . . . 16 W. R., 123

106. ——— Suit by guardian to set aside lease made by herself.—A guardian was not allowed, after having given a lease of the minor's property, to bring a suit to set it aside, because it was prejudicial to the minor's interests. Where a suit was brought under such circumstances it was dismissed with costs, the Court leaving the minor to sue to set aside the lease through some other person as next friend. **MONMOHINER JOGINER v. JUGOBUNDEO SADOOKHA** . . . 19 W. R., 233

107. ——— Fraudulent conduct of parties.—Pleading illegality of agreement.—In a

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Fraudulent conduct of parties—continued.**

case of fraudulent misdealing with property mortgaged, the defrauding parties are estopped by their own acts from setting up as against a third person, a mortgagor, the illegality of the agreement. The mortgagor is entitled to say this agreement is the real contract. **NUZUR ALLY KHAN v. OJODHYARAM KHAN** [10 Moore's L. A., 540
5 W. R., P. C., 83]

108. ——— Fraudulent endorsement on hundi.—Forged hundi.—The bond *fide* holder for value of a forged hundi, to whom, after it had been dishonoured, it had been transferred by endorsement by the payee, who at the time of endorsement knew that the hundi was forged, sued the payee on the hundi to recover the amount he had paid them for it. Held that the payee was estopped from setting up the forgery of the hundi as a bar to the suit. **BISSEN CHAND v. RAJENDRO KISHORE SINGH**

[I. L. R., 5 All., 302]

109. ——— Laches of Purchaser.—*Acquiescence*.—Where a purchaser of land lies by for five years, allowing another person to occupy the land, and afterwards to sell it, he is estopped by his own conduct from afterwards claiming the land from a *bond fide* purchaser without notice. **MOHESH CHUNDER CHATTERJEE v. ISSUR CHUNDER CHATTERJEE** . . . 1 Ind. Jur., N. S., 206

110. ——— Recognition of status of defendant as occupancy ryot.—*Suit subsequently treating him as occupying seer land*.—Held that the plaintiff having once recognised the character of the defendant as an occupancy ryot of certain land, could not afterwards sue for possession of the land, alleging it to be seer land which once belonged to the defendant and had by partition fallen to the plaintiff's puttee, possession never having been acquired by the plaintiff since partition. **KALOO RAI v. MUHUNT RAI** . . . 1 Agra, 259

111. ——— Transfer of occupancy-rights with zemindar's consent.—*Acceptance of rent by zemindar from vendees*.—Contract Act, ss. 2, 23.—Evidence Act, ss. 115, 116.—Under a deed, dated in 1879, the occupancy-tenants of land in a village sold their occupancy-rights, and the zemindars instituted a suit for a declaration that the sale-deed was invalid under section 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zemindars had consented to the sale to the vendees, and received from them arrears of rent due on the holding by the vendors, and had recognised them as tenants. Held by **OLDFIELD, J.** (whose opinion prevailed), that sales of occupancy-rights were not void under section 9 of Act XVIII of 1873, when made with the consent of the landlord; that the sale which the zemindars had consented to was valid; and that, under any circumstances, they were estopped by their conduct from bringing a suit to set aside the sale. *Per MAHMOOD, J.*—That the sale-deed was invalid with reference to

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Transfer of occupancy-rights with zemindar's consent—continued.**

the provisions of sections 2 and 23 of the Contract Act, inasmuch as its object was the transfer of occupancy-rights, which was prohibited by section 9 of Act XVIII of 1878. Also *per* MAHMOOD, J.—That section 115 of the Evidence Act implies that no declaration, act, or omission will amount to an estoppel, unless it has caused the person whom it concerns to alter his position, and to do this he must both believe in the facts stated or suggested by it, and must act upon such belief; that in the present case it could not be said that the vendee was misled by the fact that the zemindars were consenting parties to the sale-deed; that he could not plead ignorance that the deed was unlawful and void; that it had not been shown that he acted upon the zemindars' agreement to take no action, so as to alter his position with reference to the land; and that, under these circumstances, the zemindars were not estopped from maintaining that the sale-deed was invalid. *DURGA v. JHINGURI* . . . **I. L. R., 7 All., 511**

Reversed on appeal under the Letters Patent and the judgment of MAHMOOD, J., upheld in *JHINGURI TEWARI v. DURGA* . . . **I. L. R., 7 All., 878**

112. — Receipt of rent from mortgagee.—Denial of mortgage.—*Held* that the plaintiffs, zemindars, who had received rents from the mortgagee as such were estopped from pleading the invalidity of the mortgage. *GUNGA BISHEN v. RAM GUTT RAI* . . . **2 Agra, 49**

113. — Delivery under contract.—Subsequent repudiation.—*Held* that where a person delivered indigo pursuant to the terms of a satta made by a third party professing to act on his behalf, he must be considered to have assented to the engagement, and was not afterwards competent to repudiate it. *MAHOMED NUZZEROOLLAH v. FERGUSON* . . . **2 Agra, 189**

114. — Agreement signed by parties and acted on but not executed under seal as provided in Madras Act III of 1871.—Tolls, Farming of.—An agreement was entered into between the Commissioners of the town of V. and the defendant, farming the tolls of the town of V. to the defendant for one year. The agreement was duly signed by the defendant, but was not executed under seal by the Commissioners as required by Madras Act III of 1871. In a suit by the President, on behalf of the Commissioners, brought after the expiry of the year, for a portion of the sum due to them by the defendant,—*Held* that inasmuch as the plaintiff had fully performed all things to be performed on his part and both parties had acted under the agreement, though it was not formally executed by the Commissioners, and as the defendant had had the full benefit of the contract, it would be contrary to equity and good conscience to allow him to set up as ground of defence that there was no contract in point of law. *GOODRICH v. VENKANNA*

[**I. L. R., 2 Mad., 104**]

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.**

115. — Account made up in accordance with usual course of dealing.—Where an account was made up in accordance with the course of dealing which had practically been assented to by him and had been followed between the parties for many years,—*Held* the defendant could not refuse to be bound by it. *THAKOOR PRESHAD SINGH v. MOHESH LALL* . . . **24 W. R., 380**

116. — Disputing validity of will by devisee.—Previous acquiescence in will.—Where devisees under a will had on attaining majority made no objection to the will, but had on the contrary impliedly adopted the acts of their mother and guardian, and had by their conduct and acts agreed to treat the will as a valid will, they were held to be estopped from disputing its provisions. *LAKSHMIBAI v. GUNPAT MOROBA*. *GUNPAT MOROBA v. LAKSHMIBAI* [**5 Bom., O. C., 128**]

117. — Repudiation of character of heir.—Proceedings disclaiming inheritance.—An heir is not deprived of what he is entitled to as such by having, in proceedings taken against the property claimed, repudiated heirship, and denied that he had inherited. *KHEMUNKURRE DOSSEE v. GOOROO PROSAD MYTEE* . . . **11 W. R., 379**

118. — Setting up will giving larger share.—Nor by having set up a will by which he claimed a larger share and failed to prove it. *AHMEDULLAH v. GOUR HURREN BISWAS* [**15 W. R., 251**]

119. — Disclaimer of will.—Suit subsequently setting up will.—Where A., having used a document in a suit and disclaimed all right under it as a will, on the ground that it was not of a testamentary nature, brought a suit to recover property in which he set up the document as a valid will and testament, the Privy Council held that the suit could not proceed because A., having used the document and abandoned all right to it as a will, he could not again use it as a will though for a different purpose. *RAGHOONADHA PREYA OODYA TAYEE v. KATTAMA NAUCHEAR*

[**10 W. R., P. C., 1: 11 Moore's I. A., 50**]

120. — Permitting conduct of suit as if fact were admitted.—Tacit admission.—Where parties allow a suit to be conducted in the lower Courts as if a certain fact was admitted, they cannot afterwards, on special appeal, question it, and recede from the tacit admission. *MOHIMA CHUNDER ROY CHOWDHRY v. RAM KISHORE ACHARJEE CHOWDHRY* . . . **15 B. L. R., 142: 23 W. R., 174**

121. — Waiver of objection to remand.—Alleging illegality of procedure in remanding.—A party who submits without resistance to a remand, cannot afterwards be allowed to complain of the legality of the step as an integral part of the proceedings. *GHOLAM MURTEZA CHOWDHRY v. GOLUCK CHUNDER ROY* . . . **3 W. R., 191**

122. — Contesting suit.—Subsequent objection to being made a party.—A person cannot

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Contesting suit—continued.**

at one time set himself up as a substantial party in a suit, contesting it in both the lower Courts on the merits, and then turn round and say in special appeal that he has nothing to do with it, and has been unnecessarily brought in. **KRISTO GOPAL SHAHA v. KASHEENAUTH SHAH** **8 W. R., 66**

123. ——— Settlement of issues.—Omission of material issues.—Consent of parties.—A statement was prefixed to the issues settled in the Court below to the effect that "the vakeels of the parties accept the following issues." *Held* that it was not competent after such consent to object on special appeal that a material issue was omitted. **SABITRA MOHSE v. MUDHOO SOODUN SINGH**. **Marsh., 519**

124. ——— Valuation of suit.—Adoption by defendant of plaintiff's valuation.—A defendant to a suit having adopted a certain valuation cannot in the same suit object to that valuation. **KRISTO INDRO SAHA v. HUBOMONE DOSSEE**

[**L. R., 1 I. A., 84**

125. ——— Failure to appear at local investigation.—Right to object to it as erroneous.—A judgment-debtor who fails to appear before an Ameen deputed to make a local enquiry as to the moneys profits, is not precluded from objecting to the Ameen's report on the ground that the investigation was erroneous. **KABOO LALL THAKOOR v. FORBES**

[**7 W. R., 140**

126. ——— Suit for declaration of title.—Where the defendant resists the plaintiff's title, he is estopped from afterwards objecting that a suit for a declaratory decree will not lie. **SHIB JATON ROY v. PANCHANAN BOSE**

[**3 B. L. R., Ap., 55**
11 W. R., 467

127. ——— Omission to plead coparcenerahip.—Joint property.—Onus probandi.—Suit for share of joint ancestral property. The plaintiff claimed under A., who, when sued in 1812 as trustee for the defendant's father, then a minor, never pleaded that he was a coparcener. *Held* that the plaintiff, if not estopped from contending that the property was joint, had still the full burden of proving that it was joint. **SURNOMOYEE DEBIA v. GUNGA GOBIND ROY** **2 W. R., 264**

128. ——— Omission to plead jurisdiction in Foreign Court.—Raising plea in suit on decree of Foreign Court.—Defendants appeared in the French Court at Mahé, defended a suit, and made no objection to the jurisdiction. In a suit upon the decree of the said Court, defendants pleaded want of jurisdiction. *Held* that a man who has thus taken the chances of a judgment in his favour, which would, if obtained, have relieved him from all liability, is equitably estopped from afterwards pleading want of jurisdiction. **KANDOTH MAMMI v. NEELANCHERAYIL ABDU KALANDAN** . **8 Mad., 14**

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.**

129. ——— Defence suppressed in former suit.—Right to rely on it in subsequent suit.—In a former suit the present defendant sued as owner by right of inheritance to recover the property of her deceased husband, and the present plaintiff resisted that suit on the ground of her preferable right to inherit. Having failed in that suit, plaintiff brought the present suit to recover half the property on the basis of a family agreement made between her and the present defendant's deceased husband. This agreement was designedly suppressed at the period of the former suit. *Held* that the suit should be dismissed; that plaintiff in the present suit insisted upon a valid family compact varying the ordinary rules of inheritance, having, however, previously appealed to that general rule and designedly kept back the compact upon which she now sought to insist; and that there could be no stronger case of an absolute waiver of that contract and of conduct rendering it wholly inequitable to permit her now to insist upon it. *Semble*.—Where a defendant has been sued by a plaintiff upon his right of ownership, plaintiff's recovery negatives all grounds of defence to that action then existent and within the plaintiff's knowledge. **JANAKI AMMAL v. KAMALATHAMMAL**

[**7 Mad., 263**

130. ——— Omission to object to decree.—Portion of case referred to arbitrators.—Objection to award.—The plaintiff in the suit, which was one on an account stated, agreed to refer to arbitration the question whether the accounts were correct or not. It was unnecessary for the arbitrators to determine whether the account stated was proved. The decree was passed on the very day the award was filed. The plaintiff was not estopped from taking objections to the award by reason of his silence when the decree was pronounced. **PRIBAN v. BARORAN**

[**7 N. W., 367**

131. ——— Arbitration.—Umpire.—Acquiescence in award though irregular.—Where the parties prayed the Court to appoint two arbitrators and an umpire and to refer the case to them for decision, and undertook to abide by such decision as might be passed by them unanimously or by a majority of them,—*Held* that the plaintiff having appeared before the umpire and taken no objection to the procedure of the umpire from March to August, was estopped from raising the objection that an award of the umpire alone was invalid. **KUPU RAU v. VEN. KATARAMAYYAR** **I. L. R., 4 Mad., 311**

132. ——— Omission to plead agreement.—Suit to set aside decrees for rent.—When an ekrar (providing for payment of rent by deduction from larger profits) which might have been pleaded as a bar to a suit for rent has not been so pleaded, and a decree has been obtained under Act X, the matter cannot be reopened in a subsequent civil suit. **KOYLASH CHUNDER GHOSH v. KHETTERMONEE DOSSEE** **2 W. R., Act X, 57**

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.**

133. ———— **Acceptance of sum and receipt in full in satisfaction of decree.**—*Omission to allow for difference in exchange on Privy Council decree.*—*A.* obtained a decree against *B.* in the Privy Council for the sum of £213-10. *A.* applied to the High Court to direct execution of this decree for the sum of ₹2,500-1, being the equivalent of £213-10, at the then rate of exchange. This application, together with the Privy Council decree, was sent down to the lower Court, where execution was issued for the equivalent in rupees of £213-10, taking the rupee as equivalent to two shillings. This sum was paid to the decree-holder, who signed a receipt in full. *Held* that, under the circumstances, the decree-holder was not bound by the receipt in full, and that he was entitled to receive the further sum of ₹365-1 which the judgment-debtor had paid into Court. *LAKEPATY THAKOORANI v. LEEHANUND SINGH* **2 C. L. R., 322**

134. ———— **Return to compromise after contesting suit.**—A defendant cannot fall back on a deed of compromise conceding to the plaintiff a portion of his claim after having subsequently contested the whole case on the merits and run his chance of obtaining a decree dismissing the plaintiff's entire claim. *MAN GOBIND DOSS MOHAPARTY v. JANKEE RAM* **W. R., 1864, 211**

DWARAKANATH SURMAH MOJOOMDAR v. UNNODA SOONDUREN **5 W. R., 50**

135. ———— **Kistbundi given by party on attaining majority.**—*Subsequent dispute of liability.*—The appellants made a claim upon the respondents in respect of certain bonds given during their minority by their executor and guardian. On attaining majority, the respondents, being desirous of avoiding payment, were advised that they could only do so by instituting a suit to which the executor must be a party, and in which a settlement of his accounts would be required. Rather than do this, they came to terms with the appellant in order to obtain time for the payment of the debt by instalments, and a kistbundi was accordingly executed. *Held* that the respondents could not now, after the death of their guardian, dispute their liability for a debt which they had thus deliberately undertaken to pay. *GHOLAB KHOONWARREN BEBER v. ESHUR CHUNDER CHOWDHRY* **2 W. R., P. C., 47**
[**8 Moore's I. A., 447**]

136. ———— **Suit after compromise and decree.**—*Cause of action.*—*Res judicata.*—*A.*, who was in partnership with *B.*, *C.*, and *D.*, brought a suit in the Zillah Court of Jessore against *B.*, *C.*, and *D.*, for an account and division of the partnership estate. An arrangement was come to between the parties, on the faith of which *A.* filed a razeenamah, stating that his claim was satisfied, and allowed a decree to go against him in terms of the razeenamah. The defendants failed to carry out their part of the arrangement. *A.* petitioned the Zillah Court for leave to withdraw his petition of compromise, and that the suit might proceed as if no decree had been passed, but the Court refused the petition.

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Suit after compromise and decree—continued.**

The principal place of business of the defendants was in Calcutta. In the Court below an application was made to have the plaint taken off the file on the ground that it disclosed no cause of action, but showed that the plaintiff was estopped from suing, but the application was rejected. *Held* on appeal that *A.* was not barred from bringing a suit in the High Court to compel the defendants to perform the agreement, upon the basis of which the decree was obtained in the Zillah Court, either by the fact of the consideration of the agreement being the consent of *A.* to the compromise of the suit, or by the decree of the Zillah Judge. *KALLY NAUTH SHAW v. RAJEEB LOOHUN MOOKERJEE*

[**2 Ind. Jur., N. S., 122**: on appeal, **Id., 343**]

137. ———— **Compromise of execution of decree.**—*Execution of compromise as a decree.*—*Acquiescence.*—The parties to a decree for the payment of money altered by agreement such decree as regards the mode of payment and the interest payable. For many years such agreement was executed as a decree, without objection being taken by the judgment-debtor. On the 1st March 1878, the holder of such decree applied for execution of such agreement. The judgment-debtor objected that such agreement could not be executed as a decree, and such application should therefore be disallowed. *Held* (*OLDFIELD, J.*, dissenting) that such agreement could not be executed as a decree, and such application could not be entertained, and that the judgment-debtor was not, by reason that he had submitted to the execution of such agreement as a decree, estopped from objecting to its continued execution as a decree. *DEBI RAI v. GOKAL PRASAD* **I. L. R., 3 All, 585**

See STOWELL v. BILLINGS. **I. L. R., 1 All, 350**

RAMLAKHAN RAI v. BAKHTAUR RAI

[**I. L. R., 6 All, 623**]

138. ———— **Contract superseding decree.**—A judgment-debtor, against whom a decree for money was in course of execution, presented a petition to the Court executing the decree, in which it was stated that a part of the money payable under the decree had been paid; that it had been agreed that a part of the balance should be set-off against a debt due to the judgment-debtor to be realised by the decree-holder, and the remainder should be paid by the judgment-debtor by certain instalments; and that, if default were made in payment of any one instalment, the decree-holder should be at liberty to execute the decree for the whole amount, and the judgment-debtor asked the Court to sanction the arrangement. The decree-holder expressed his assent to the arrangement, and the Court recorded a proceeding reciting the arrangement, and releasing from attachment property of the judgment-debtor which had been attached. Default having been made, the decree-holder applied for execution of the decree. *Held* that the petition of the judgment-debtor set out above did not amount to, nor was it any evidence of, a new contract superseding the decree, and the

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Compromise of execution of decree—continued.**

decree-holder was not estopped therefore from executing the decree, which therefore the Court allowed to be executed. *Debi Rai v. Gokal Prashad, I. L. R., 3 All., 585*, distinguished. *GANGA v. MURLI DEAR* I. L. R., 4 All., 240

See DARBHA VENKAMMA v. RAMA SUBBARAYADU
[I. L. R., 1 Mad., 387]

139. ——— Evidence Act, s. 115.—Sale in Execution of decree.—Erroneous impression of what was sold.—In execution of a decree for costs the defendants caused the "rights and interest of the judgment-debtor to the extent of 16 annas," in a particular mouzah, to be put up for sale. It appeared that in a former suit the defendants had already been adjudged a 12-annas share in the mouzah. The plaintiff, who became the purchaser, claimed to be entitled to the whole 16 annas, alleging that he had been misled by the description of the property sold, and contending that the defendants were estopped, under section 115 of the Evidence Act, from denying that 16 annas had been put up for sale. *Held* that to bring the case within section 115 of the Evidence Act, the following findings were necessary: (1) that the plaintiff believed that the judgment-debtor, whose rights and interest were sold, was the owner of the whole 16 annas; (2) that acting upon that belief he purchased the property at the sale; (3) that belief, and the plaintiff's so acting upon that belief, were brought about by some declaration, or act, or omission, on the part of the defendant, which declaration, act, or omission were intentionally made in order to produce that result; and that inasmuch as the finding of the District Judge had not amounted to this, there was no estoppel. *SOLOMON v. LALLA RAM LALL*

[7 C. L. R., 481]

140. ——— Evidence Act, s. 115.—Petition to postpone sale in execution of decree.—To petition for the postponement of a sale in execution of decree is not an intentional causing or permitting the decree-holder to believe that the judgment-debtor admits that the decree can be legally executed and occasions no estoppel within the Evidence Act, 1872, section 115. The judgment-debtor can, notwithstanding his having filed such a petition, maintain that execution is barred by lapse of time. *MINA KONWARI v. JUGGAT SETANI* I. L. R., 10 Cal., 193

[13 C. L. R., 385
L. R., 10 I. A., 119]

141. ——— Causing sale of right.—Subsequent plea that right was barred.—A party by whom malikana was payable obtained a decree against the maliks and executed it by selling their right to malikana. The purchaser then sued the decree-holder for arrears of malikana, and the plea set up by the defendant was limitation. *Held* that as the defendant had caused the right to malikana to be sold, he could not avail himself in equity of the

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Causing sale of right—continued.**

plea of limitation, and say that what was purchased was not a substantial right actually existing at the time. *ALAI AHMED v. BODHOO SINGH*

[14 W. R., 204]

142. ——— Acquiescence of decree-holder.—Waiver of heir.—Where a decree-holder brings to sale in execution of his decree property on which he holds a mortgage, without notifying his encumbrance upon it, and on being asked by any intending bidder at the time of the sale whether there is any encumbrance on the property, gives an evasive answer which misleads the bidder and induces him to purchase the property as unencumbered, he cannot subsequently claim as against such bidder to enforce his mortgage. *MCCONNELL v. MAYER*

[2 N. W., 315]

DOOLAB SIRCAR v. KRISTO COOMAR BUKSHEE

[3 B. L. R., A.C., 407; 2 W. R., 303]

143. ——— Inducing person to buy property by denying existence of claim upon it.—Subsequent attempt to enforce charge.—A man who has represented to an intending purchaser that he has not a security in the property to be sold, and induced him under that belief to buy, cannot as against that purchaser subsequently attempt to put his security in force. *MUNNOO LALL v. LALLA CHOONER LALL* 21 W. R., 21

[L. R., 1 I. A., 144]

144. ——— Sale in execution of decree against wrong person as representative of deceased.—Subsequent claim by proper representative.—Quiescence of real representative.—One *S.* died indebted to the second defendant, *M.* On his death his widow, *T.*, became his heir, as he left neither son nor brother surviving. In 1878 *M.* brought a suit to enforce payment of the debt due by the deceased *S.*, and he made *B.*, the mother of *S.*, defendant in the suit, omitting *T.* altogether. On 30th August 1878 *M.* obtained an *ex parte* decree, and on the 26th July 1880 the house of *S.*, then in the possession of *B.*, was sold in execution, and the first defendant, *R.*, purchased it. On 6th September 1880 the sale was confirmed, and on 26th November 1880 *R.* was put into possession. On the 10th of December 1880, one *S. B.* presented a petition on behalf, as he alleged, of the plaintiff *T.*, the widow of *S.*, to set aside the sale. He did not produce any authority from her, and his application was rejected on the 14th June 1881. On the 31st October 1878, *T.* adopted the plaintiff *B.*, under an authority, as she alleged, of her deceased husband, *S.* In 1881 *T.* filed the present suit on behalf of her adopted son *B.* to set aside the sale and to recover the house. *Held* that the plaintiff was entitled to have the sale set aside, and to recover possession of the house. The estate was vested in *T.* as legal representative of her deceased husband. Had *T.* wilfully put forward *B.* as the representative of *S.* so as to deceive and mislead *M.*, then, no doubt, she might be held bound by the decree obtained by the latter against *B.* Her mere quiescence while *M.* wilfully sued the wrong person could not affect

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Sale in execution of decree against wrong person as representative of deceased—continued.**

her legal rights, or deprive her adopted son, the plaintiff *B.*, of his rights. He could not be bound by suit and sale to which he was not a party either in person or by representation. *Held*, also, that *T.* was not bound to come forward to assert her ownership when the property was attached and sold under *M.*'s decree. The rule—that one who, knowing his own title, stands by and encourages a purchase of property as another's, will not be allowed to dispute the validity of the sale—implies a wilful misleading of the purchaser by some breach of duty on the owner's part. In this case there was nothing more than mere quiescence on the part of *T.* **BASWANTAPA SHIDAPA v. RANU** I. L. R., 9 Bom., 88

145. — Mistake as to what was sold in proclamation of sale.—Purchase by decree-holder.—M., a judgment-creditor, having attached certain land of his judgment-debtor, entered, by mistake, one parcel thereof in the proclamation of sale as two parcels having different numbers in the list of property to be sold. This parcel was put up for sale and purchased by the decree-holder himself, and was subsequently put up for sale and purchased by *T.* In a suit brought by *T.* against *M.* to restrain *M.* from entering on the land,—*Held* that *M.* was estopped by his conduct from setting up his title as purchaser against *T.* **TUMAPPA CHETTI v. MURUGAPPA CHETTI I. L. R., 7 Mad., 107**

146. — Disclaimer of title in former suit.—Evidence Act, s. 115.—Sale in execution of decree.—Intervenor in rent suit.—A purchase by a mortgagee, at a sale in execution of a decree upon his mortgage, of the right, title, and interest of the mortgagor, who has been estopped from asserting a title to the property as against certain parties, does not place such mortgagee in a better position as regards the estoppel. A suit for rent by a zemindar and putnidar against a darpatnidar was defeated by the defence of the latter that he had conveyed his interest to others, against whom the former afterwards obtained a decree, and brought the darpatni to sale in execution, buying their right, title, and interest therein himself. From the darpatnidar who had thus disclaimed title, a third party claimed to be mortgagee, and set up a decree on his mortgage followed by a purchase of the tenure at a sale in execution. He was thereupon allowed to intervene in a suit for rent brought by the zemindar and putnidar against an ijaradar of lands within the darpatni estate. *Held* that, notwithstanding this purchase, the intervening mortgagee was bound by the estoppel arising out of the mortgagor's disclaimer of title in the suit above mentioned. **PORESHNATH MUKERJI v. ANATHNATH DEB** I. L. R., 9 Cal., 265; I. R., 9 I. A., 147

147. — Assertion of title by auction-purchasers independently of sale.—Admission of title by purchase.—It was held that the auction-purchasers at a sale in the execution of a decree were not estopped from asserting, as against a

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Assertion of title by auction-purchasers independently of sale—continued.**

person claiming to be a mortgagee prior to the sale of the property purchased, that in fact the property was their own, independently of the auction-sale. At the most their conduct in making the purchase could only be regarded as some evidence of an admission of title in the judgment-debtor, which they could explain or rebut. **HANUMAN DAT v. ASSADULLAH** [7 N. W., 145

148. — Benami transaction.—Execution of deed.—A. executed a deed of sale of a house in favour of *B.*, which was duly registered. *B.* afterwards mortgaged the house to *C.* *Held* that *A.* and those claiming through him were estopped as against *C.* from setting up that the sale of the house to *B.* was a benamie transaction, and that *A.* continued notwithstanding to be the true owner. **RAKHALDASS MODUCK v. BINDOO BASHINER DEBIA**

[Marsh., 293; 2 Hay, 157

See **RAM MOHINER DOSSEE v. PRAN KOOMARNE**

[8 W. R., 88

149. — Benami Purchase.—Mortgage by benami purchaser.—A. purchased immoveable property in the name of *B.*, and allowed *B.* to occupy and retain possession of the property. *B.* mortgaged the property to *C.* for a valuable consideration. *Held* that *A.* and those claiming through him were estopped from asserting, as against *C.*, his or their title to the property, and that the mortgage was valid. **KALLY DOSS MITTAR v. GOBIND CHUNDER PAUL Marsh., 569**

See **RAM MOHINER DOSSEE v. PRAN KOOMARNE**

[3 W. R., 88

and **SMITH v. MOKHUM MAHTON**

[18 W. R., 526

150. — Benami transaction.—Right of creditor to question acts of debtor's benamidar.—The creditor of a deceased proprietor is not estopped, in the way in which the deceased would have been were he alive, from questioning acts done by the said proprietor's benamidar; for the rule of law by which an heir or assignee stands in no better position than the party through whom he derives his title admits of an exception in favour of those who would be themselves aggrieved or defrauded by the party through whom they claim. **LEKHRAJ ROY v. MOTER MADHUB SEIN** 15 W. R., 333

151. — Benami suit.—Suit brought by one person in name of another.—Defendant in consideration of money advanced by *A.* chose to enter into a mortgage with *B.*, who now sued for possession after foreclosure. *Held* that it did not lie in the defendant's mouth to object to the suit being brought by *A.* in *B.*'s name. **SREENATH NAG v. CHUNDERNATH GHORE** 17 W. R., 192

152. — Recital in conveyance.—Purchaser, Effect of admissions on.—Admissions by conduct.—The deed of conveyance of land in Cal-

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Recital in conveyance—continued.**

cutta recited that the vendor was "seised of, or otherwise well entitled" to the property intended to be sold "for an estate of inheritance in fee-simple," and it purported to convey such an estate. In a suit for dower by the vendor's widow against the heirs of the purchaser, *Held* that although, as between the plaintiff and the defendants, there was no estoppel which could prevent the defendants from proving that the estate sold was other than an estate in fee-simple, yet, as the purchaser bought the property as and for an estate of inheritance and paid for it as such, the recital was *prima facie* evidence against the purchaser and persons claiming through him, that the estate conveyed was what it purported to be, it being an admission by conduct of parties, which amounted to evidence against them. *SARKIES v. PROSONOMOYER DOSSER*

[I. L. R., 6 Calo., 794: 8 C. L. B., 76]

153. — *Endorsement on deed of conveyance.—Authority to convey.*—The defendant had received a conveyance of half a certain piece of land from *S. J.* (*S. J.* having the right to convey only two fifths of the said land, the remaining two fifths and one fifth belonging respectively to a brother and sister of *S. J.*). When *S. J.* gave the conveyance it was endorsed by his sister. This endorsement amounted to an estoppel as against her, or any one claiming through her, against saying that *S. J.* had not a full right to convey. *BLAQUIER v. RAMDHONE DOSS* . . . *Bourke, O. C.*, 319

154. — *Alteration of written agreement.—Inference drawn from acts of parties.*—Where it was clearly inferable from the subsequent acts and conduct of the parties, that an arrangement reduced to writing has been modified and tacitly cancelled, one of the parties cannot, in the absence of any understanding to return to it, be allowed to enforce the original agreement and set aside the arrangement subsequently agreed to. *NUNKER alias PARBUTTER v. BRASSUSURNATH* . . . *3 Agra*, 428

155. — *Failure to put in defence in former suit.—Consent implied.*—The failure of a party to put in an answer in a former suit, which in no way threatened his title as a reversioner, cannot be construed into a consent on his part to an alienation made by a Hindu widow, which has been found in a subsequent suit to be illegal on an issue raised to contest its validity as made without legal necessity. *BISHESHUR MOOKERJEE v. JUDONATH BOSE*
[W. R., 1864, 48]

156. — *Consent to allow joint property to be dealt with in certain way.—Power to withdraw consent.*—After the several owners of joint property have given their assent to its being employed in a particular way, and such consent has been acted on, it is not competent to an individual owner or a purchaser under him to retract his consent. *ROOF DEBEE v. GUNGOO MULL*

[3 N. W., 66]

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.**

157. — *Agreement between widow and reversioners as to distribution of estate.—Reversioner witness to deed.*—A Hindu widow in possession of her deceased husband's separate landed estate, her deceased husband's mistress, and his illegitimate daughter, and the next reversioner to such estate, with the object of adjusting family disputes, entered into an arrangement by an instrument in writing for the distribution of such estate. A remoter reversioner to such estate was a witness to such instrument, and took a prominent part in making such arrangement, and the same had his full consent. *Held* that such remoter reversioner was estopped by such conduct from afterwards questioning the legality and genuine character of such distribution and the validity of assignments made by the persons who shared in such distribution. *STA DASI v. GUR SAHAI*
[I. L. R., 3 All., 362]

158. — *Acquiescence in decree binding joint family for debts.—Sale in execution of joint property for decree against manager.*—In a suit by *A.*, a member of a Mitakshara joint family, to recover possession of a share of certain property sold in execution of a decree, dated 21st April 1876, against his father only in a suit to which *A.*, although he came of age in 1868, was not a party, it appeared that the debt for which the property was sold was begun in 1865, was increased in 1869, and re-affirmed in 1878 and 1875 under circumstances which would bind the family. *A.* had lived jointly with his father and acquiesced in his management of the property. *Held* that the joint property being liable for the debt upon which the decree was obtained, and the purchaser having purchased the property *bond fide*, the plaintiff was not entitled to disturb the alienation; and further that, under the circumstances, he was estopped from claiming his share. *DAMUDAS DASS v. MAHORAM PANDAH* . . . *13 C. L. R.*, 96

159. — *Recognition of adoption by widow.—Subsequent objection on ground of its invalidity.*—Where it was not intended by the widow that her adopted son should succeed her in the management and enjoyment of the property without her consent, she may resist the claim of the adopted son to eject her, on the ground of the invalidity of the adoption under the Hindu law, notwithstanding her previous treatment and recognition of the plaintiff as her adopted son, and her acknowledgment having been received and acted upon by the authorities without question. *OOMRAO SINGH v. MARTAB KOONWAR*
[3 Agra, 108A]

160. — *Adoption made in full belief it is valid.—Inducing adopted person from claiming share of inheritance in his natural family.*—The rule of estoppel by conduct does not apply where an adoption is made by a person in full belief that the adoption is valid in law, and thereby, and by the subsequent conduct of the adopter, the person adopted is induced to abstain from claiming a share in the inheritance of his natural family, so as to prevent a person claiming through the adopter from impugning the validity of the adoption. *ERANJOLI*

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.**

Adoption made in full belief it is valid—continued.

ILLATH VISHNU NAMBUDEI v. ERANJOLI ILLATH KRISHNAN NAMBUDEI . I. L. R., 7 Mad., 3

161. ——— Conduct of ancestor.—

Acquiescence.—A person on attaining majority cannot contest an arrangement which the person from whom he inherited had during his minority acquiesced in. *TRIPOORA SOONDAREE v. GOPAL NATH ROY*

[25 W. R., 358]

162. ——— Estoppel by acts of ancestor when claiming through him.—Taking lease from Government.—In a suit against *S.* and *G.* to recover possession with meane profits of land of which the plaintiff had been dispossessed by *G.* as lessee of the Government, he claimed the land as part of an estate (*M.*) which belonged to him and his ancestors by the title under which it was held, and had been in their possession very long under that title, and that he had held the property as of right adversely to *S.* for a period which sufficed to give him a title. The lower Court made the Government a party, and finding that the plaintiff's father had repeatedly taken from Government a farm of the villages in question after they had been declared not to be a portion of *M.* but of a resumed talook, concluded that the plaintiff was estopped by the conduct of his father. *Held* that the Government ought not to have been made a party, for the plaintiff did not couch his claim in any degree adversely to Government; and that the father's acts were no estoppel to the plaintiff such as to prevent him from instituting the present suit against *S.* and *G.* *RAM RUNJUN CHUCKERBUTTY v. COURT OF WARDS*

[21 W. R., 192]

163. ——— Acquiescence.—Estoppel by acts of mother.—The plaintiff having known the nature of an original grant, and herself recognised and acquiesced in the acts of the lessee,—*Held* that she was bound by the acts of her mother, which as a whole resulted beneficially for the estate; and that in any case she was precluded from questioning them now by the law of limitation, the present suit having been brought more than twelve years subsequent to the death of the mother. *PUDDOMONRE DOSSEN v. DWARKANATH BISWAS*

. 25 W. R., 335

164. ——— Acquiescence in adoption.—Subsequent objection to validity of adoption.—Where the defendant actively participated in the adoption of the plaintiff, the defendant's brother, and by many acts signified to the plaintiff and to his adopting father the defendant's complete acquiescence in the adoption, and thereby encouraged the plaintiff, who was an adult, to assent to such adoption, and allowed the adopting father to die in the belief that the adoption was valid, and finally concurred in the performance, by the plaintiff, of the funeral ceremonies of his adopting father,—*Held* that the defendant was estopped from disputing the validity of the adoption. *SADASHIV MORSESHVAR GHATE v. HARI MORSESHVAR GHATE*

. 11 Bom., 190

CHINTU v. DHONDU . 11 Bom., 192, note

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.**

165. ——— Contradicting conduct in former case.—Allowing attachment of property.—Plaintiffs who have in a former case allowed property attached as theirs by their creditors to be claimed and taken by the defendants, are estopped in a subsequent suit from making a contrary averment. —*ERSKINE & Co. v. OKHOY CHUNDER DUTT*

[W. R., 1864, 58]

166. ——— Transfer for fraudulent purpose.—Subsequent suit to recover property.—A father who transferred property to his sons for the sake of defrauding creditors, and permitted the sons to put forward claims on the property founded on a title inconsistent with his own, was held to have created a state of circumstances in which the sons were entitled to say that he could not afterwards sue to recover the property from them. *HURRY SUNKUR MOOKERJEE v. KALI COOMAR MOOKERJEE* . W. R., 1864, 265

167. ——— Transfer by trustee in breach of trust.—Suit by trustee to recover possession.—Bond fide transferee for value without notice.—A trustee, alleging that the trust property consisting of land, was his own property, mortgaged it. The mortgagee took the mortgage in good faith, for valuable consideration, and without notice of the trust. The mortgagee obtained a decree against the trustee for the sale of the land, and the land was sold in execution of that decree. The trustee subsequently brought a suit to recover the land from the purchaser on the ground that it was trust property and that he had no power to transfer it. To this suit none of the beneficiaries under the trust were parties. *Held* that the plaintiff was estopped by his conduct from recovering possession of the land. *GULZAR ALI v. FIDA ALI* . . . I. L. R., 6 All, 24

168. ——— Declaration of husband as to wife's ownership of property.—Subsequent claim of his heirs.—Where the husband during his lifetime did in every way both publicly and privately, whenever called upon to make any representation on the subject, always represent that certain immovable property was his wife's, the purchasers from her could not after his death be equitably turned out of the property in favour of his heirs. The heirs after his death would be as much bound by the father's misrepresentations as he would have been during his life. *LUCHMUN CHUNDER GEEK GOSSEIN v. KALLI CHURN SINGH* . . . 19 W. R., 292

169. ——— Equitable estoppel.—Extinguishment of charge.—An owner of property made a grant therefrom of an annuity, with a proviso that, in case of failure to pay the same, the grantee and her heirs should be entitled to take possession of the property. He subsequently mortgaged the same property, by an instrument which set out that it was his absolutely. After this he paid the annuity till the death of the grantee, whose heir he was. The mortgagee obtained a decree upon their deed, and in execution thereof the property was attached and sold, and the decree-holders obtained possession. The heirs of the mortgagor sued the decree-holders for recovery of

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Equitable estoppel—continued.**

possession, and for arrears of the annuity, claiming under the terms of the grant. *Held* that the charge merged and was extinguished, and as the grantor had professed to transfer the property to the mortgagees unincumbered, he was bound to give it over to them free from incumbrance, and it would not lie in his mouth, nor in the mouths of his heirs, to set up the charge against the mortgagees and their vendees. **RADHEY LAL v. MAHESH PRASAD** [I. L. R., 7 All, 864]

170. ———— Acts of agent.—Authority of agent.—Member of Hindu joint family.—A person's agent for the purchase of an estate is not necessarily his agent to re-convey the same. Thus, where one member of an undivided Hindu family, with the authority of his brothers, purchased a share in certain property, and afterwards (without any authority from them) cancelled the sale, received back the consideration-money, and surrendered the kobalah, *Held* that the brothers were not estopped from suing the parties in possession of the whole property to set aside what the single brother had done, and to obtain possession of the share in question. **BRUJONARUD MYYER v. RADHA CHURN MYYER** . . . 7 W. R., 385

171. ———— Purchase by agent.—Setting up character as principal.—Where a man steps in during an auction-sale and assumes the character of a principal agent, and, depositing another who is really acting as agent, purchases the property, he cannot afterwards be allowed, in equity, to turn round and claim to have purchased not for the principal but for himself, and to obtain a profit out of his purchase. **LOKHEE NARAIN ROY CHOWDERY v. KALLY PUDDO BANDOPADHYA** [23 W. R., 358; I. L. R., 2 I. A., 154]

172. ———— Estoppel by assent to delivery order.—Evidence Act, ch. VIII.—Vendor and purchaser.—A. contracted to buy from B. & Co. 180,000 gunny bags for cash on delivery. Subsequently C. agreed with A. to advance Rs15,000 against 87,500 bags. B. & Co. gave delivery orders to A., although the goods remained unpaid for. A. then endorsed certain of the delivery orders over to C. On these orders the agents of B. & Co., at the request of A., wrote the following words: "The bearer of this will personally take delivery of each lot as required." C. took delivery of 50,000 bags, but B. & Co. refused to deliver to him the remainder, on the ground that A. had not paid them according to the terms of his contract. *Held* that, although there had been no actual appropriation of any goods to A., yet as B. & Co., by their agents, had consented to the transfer, and had thereby induced C. to advance Rs15,000 on the delivery orders being endorsed and made over to him, it was not now open to them to repudiate the transfer, which they had, through their agent, been the means of confirming. Estoppels in the sense in which that term is used in English legal phraseology are matters of infinite variety, and are by no means confined to the subjects which are dealt with in chapter VIII of the Evidence Act. A man

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Estoppel by assent to delivery order—continued.**

may be estopped not only from giving particular evidence, but from doing any act or relying upon any particular argument or contention, which the rules of equity and good conscience prevent him from using as against his opponent. **GANGES MANUFACTURING Co. v. SOURJUMULL**

[I. L. R., 5 Calc., 669; 5 C. I. R., 538]

173. ———— Acquiescence of mortgagees.—Waiver of priority.—When a prior encumbrancer with a full knowledge of his title stands by and through his agency allows the mortgagor to deal with the property as if it was unencumbered, *Held* that by such conduct he loses that priority to which the prior date of his encumbrance would, had he acted otherwise, have entitled him. **RAI SRETA RAM v. KISHUN DASS alias KISHNARAM** . 3 Agra, 402

174. ———— Right of Appeal by defendant disclaiming all interest on his own account.—Suit for redemption.—S. sued to redeem land mortgaged to N. and made P. a defendant in the suit on the ground that he was in possession on account of N., his brother. P. disclaimed all interest on his own account, and alleged that he was in possession on behalf of N. and that the mortgage was a forgery. N. did not appear. The Munsif decreed for the plaintiff. P. appealed. The Subordinate Judge dismissed the suit on the ground that the mortgage was not proved. *Held*, on second appeal, that P. had no *locus standi* and could not appeal from the Munsif's decree. **SESHAYAR v. PAPPUVARA-DAYANGAR** . . . I. L. R., 6 Mad., 185

175. ———— Acquiescence.—Mortgage executed during plaintiff's minority.—The plaintiff sued the defendant on mortgages executed to the plaintiff by the adoptive mothers of the defendant (who were also defendants) subsequently to his adoption. The plaintiff contended that the mortgages had become effectual as against the defendant by reason of his subsequent conduct. Evidence was given that he had promised his adoptive mothers to redeem the mortgages, and that he had stood by and allowed the plaintiff to carry out the provisions of the mortgage deeds to his own detriment by paying maintenance to the defendant's adoptive mothers and by paying off certain mortgages which had been created by them previously to the adoption of the defendant. *Held* that knowledge on the part of the defendant that the plaintiff was carrying out the provisions of the mortgage deeds, and his allowing the plaintiff to do so, did not estop him from disputing them afterwards, for it was no part of his duty to step in and protect the plaintiff against the consequences of his own unauthorised dealings with his property. **SHIDDESHVAR v. RAMCHANDRARAY** [I. L. R., 6 Bom., 463]

176. ———— Intervenor made party by plaintiff.—Appeal by plaintiff against order making him party.—When an intervenor in a suit to recover rent is made a party at the request of the

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Intervenor made party by plaintiff—continued.**

plaintiff, the latter cannot afterwards, by special appeal, get rid of the effect of his own act. **SHAM CHUND GHOSH MUNDUL v. DOYAMOYEE MUNDULNEE** **9 W. R., 338**

177. ——— Representation as to transfer of property.—Suit for rent.—Intervenor.—Evidence Act, s. 115.—In a suit for rent brought against an ijaradar by a person claiming to be the darpatnidar of certain property, the defendant resisted the claim upon the ground that another person was the real owner of the darpatni, and this person was made a co-defendant, and intervened for the purpose of supporting his title to the rent. It appeared that in the year 1259, *A.* purchased the darpatni estate, and sold it in 1265 to his wife *B.* and son *C.* Afterwards *A.* successfully resisted a suit for rent brought against him by the present plaintiff as superior landlord, on the ground that he had parted with his interest in the estate to *B.* and *C.* The plaintiff then sued *B.* and *C.* for the rent and obtained a decree, under which the darpatni was sold to him. He now sued the ijaradar. The intervening defendant contended that *A.* had mortgaged the property to him, and that such proceedings had been taken on the mortgage that he was entitled in *A.*'s right to the rent of the property as the owner of it. *Held* that the intervening defendant could take no better title than *A.* himself; and that as *A.* had directly induced the plaintiff to believe that he had sold the property absolutely to *B.* and *C.*, and had led him to bring a suit against them for the rent, and under the decree obtained in that suit to purchase their interest in the property, the intervening defendant could not set up a claim to the rent in the present suit as against the plaintiff. **AUNATH NATH DEB v. BISTU CHUNDER ROY** **I. L. R., 4 Calo., 783**

178. ——— Joint decree.—Amount of shares in joint property.—The mere fact of two parties having jointly sued and obtained a decree by right of pre-emption against a third party does not preclude either from contending that by agreement they were not to take equal shares in the purchase. **BEERUNJA KOSREE v. HURPERSHAD LALL**

[3 Agra, 235]

179. ——— Acceptance by landlord of lower than decretal rate of rent.—Where a decree has declared a certain rate of rent payable, the landlord is not prevented, by the mere fact that he has not insisted on the rent being paid at that rate, but has accepted a lower one, from recovering at the rate given by the decree. **MAZZUM ALLY KHAN v. PIETHEE SINGH** **3 Agra, 263**

180. ——— Effect of condition in wajib-ul-urz.—Suit to set aside condition.—Where a wajib-ul-urz contained a condition restricting the landlord's right to enhance,—*Held* that having signed it he must be held to be bound by it, until he establishes his right by a civil suit to have the condition

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Effect of condition in wajib-ul-urz—continued.**

in the wajib-ul-urz set aside. **KYALEE RAM v. MAHOMED ALI KHAN** **1 Agra, Rev., 62**
NUTTHA RAM v. SOOKH RAM **3 Agra, 90**

181. ——— Assertion of proprietary right.—Subsequent claim to maintenance.—Under special circumstances, a widow who had asserted a proprietary right in certain property, without putting forward any claim for maintenance, not allowed afterwards to enforce her claim for maintenance against such property in the hands of a purchaser. **GOOLABEE v. RAMTAHAL RAI**
[1 N. W., 191: Ed. 1873, 275]

182. ——— Grant of mokurrari pottah by parties who afterwards acquire permanent settlement.—Parties holding a permanent settlement from Government cannot question the validity of a mokurrari pottah previously granted by themselves when they held the property under a temporary settlement. **ABDOOL MANNAH v. BARODA KANT BANERJEE** **15 W. R., 394**

183. ——— Recognition of talookdari right.—Purchaser at sale for arrears of revenue.—At a sale for arrears of revenue, Government purchased a pergunnah, containing a certain talook belonging to *A.* The talook was not cancelled, and the Government made successive temporary settlements with *A.* in which his talookdari right was recognised. The right and interest of Government in the pergunnah were afterwards sold to *B.*, who ousted *A.* *A.* afterwards joined with *C.* in taking a patni lease of the same land which he had in the talook. *Held*, in a suit by *A.* against *B.* and *C.*, that this conduct estopped him from recovering possession of the dependent talook from which he was ousted by *B.* **ASSAMOULLAH v. OBHOY CHURUM ROY, 13 Moore's I. A., 817: 13 W. R., 24, cited and distinguished.** **GOOROO PERSHAD CHUCKREBUTTY v. BANI NATH CHUCKREBUTTY** **2 C. L. R., 216**

184. ——— Registration in Collectorate.—Onus probandi.—In a suit to recover possession of certain land and houses, in which the plaintiffs rested their claims on the allegation that when the succession opened out they were seventh in degree, whereas the defendants were eighth in degree, from a common ancestor, and were entitled to no part of the property, it appeared that immediately after the opening out of the succession, the plaintiffs had treated the defendants as having equal rights with themselves and as being in an equal relationship to the common ancestor, and had permitted their names to be registered as such in the Collector's books. *Held* (affirming the decree of the High Court at Allahabad) that the course of conduct of the plaintiffs, although not amounting to an estoppel in point of law, threw the burden upon them of proving the allegation on which they rested their claim. **AGEAWAL SINGH v. FOUDAE SINGH** **8 C. L. R., 346**

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.**

185. ——— Deposit of money.—Rate of interest.—The plaintiff deposited money with defendants, bankers, on 30th August 1868. On 2nd January 1867 an account was stated and a balance found to be due to the plaintiff consisting of the original deposit and interest at six per cent. per annum. On 11th February 1876, the defendants proposed to pay the plaintiff such balance together with interest on the original deposit from January 1867 to February 1876, at only 4 per cent. per annum. The plaintiff now claimed the difference between interest at 4 and interest at 6 per cent. *Held*, the defendants were estopped from disputing the plaintiff's demand for interest at the latter rate. **MAKUNDI KUAR v. BALAKISHN DAS** . . . **I. L. R., 3 All., 328**

186. ——— Construction of document making suit premature.—Subsequent contention that suit is barred.—In a suit brought to recover money lent upon a mortgage which the defendant refused to register, the defendant put a construction upon the arrangement which was accepted by the Court, and the claim dismissed as premature. *Held* that when the plaintiff sued again in due (i.e., mature) time, it was not open to the parties or to the Court to say that the first construction was wrong. **EVATONNISSA v. KHONDKAR KHODA NEWAZ**

[**21 W. R., 374**]

187. ——— Giving notice of action under s. 53, Act XXIV of 1859.—Contention of non-applicability of section.—The plaintiff, a constable of police, sued the defendant, an inspector of police, for money had and received to the plaintiff's use. The defendant had received the pay of the plaintiff, but failed to give it to the plaintiff. Notice of suit was given by the plaintiff under section 53 of the Madras Police Act XXIV of 1859. *Held* that the plaintiff was not estopped by his having given such notice from contending that section 53 was not applicable to the case. **GUNDAM VENKATASAMI v. CHUNNIAM PURUSHOTTAMA** . **5 Mad., 466**

188. ——— Agreement not to appeal.—Subsequent appeal.—After a plaintiff had obtained a decree, and under it, in execution, arrested his judgment-debtor, the latter filed a petition in Court agreeing not to prefer any appeal against the judgment obtained by the plaintiff, and the judgment-creditor at the same time agreed to release the judgment-debtor from arrest, and to take payment of the sum decreed to him by instalments. An order was passed by the Court embodying this arrangement. The judgment-debtor, in contravention of this arrangement, preferred an appeal. *Held* that the judgment-debtor having induced the decree-holder to believe, and having expressly undertaken that he would not prefer an appeal, and having by the representation and undertaking procured his own release from arrest, was estopped from acting contrary to his deliberate representation and undertaking. **PROTAP CHUNDER DASS v. ARATHOON. ARATHOON v. PROTAP CHUNDER DASS** [**I. L. R., 8 Calc., 455; 10 C. L. R., 443**]

See **AMIR ALI v. INDURJIT KOER**

[**I. L. R., 460**]

ESTOPPEL—continued.**5. ESTOPPEL BY CONDUCT—continued.****Agreement not to appeal—continued.**

RAJMOHUN GOSSAIN v. GOUMOHUN GOSSAIN

[**4 W. R., P. C., 47; 8 Moore's I. A., 91**]

189. ——— Acquiescence in use of trade mark.—Subsequently denying right to use it.—Where the plaintiffs by their conduct led the defendant to believe that they claimed no right to a certain trade mark, and that it was open to the defendant to adopt it as his own, and the defendant did adopt it, and by his industry secured a wide popularity for it in the Indian market, *Held* that the plaintiffs were estopped from denying the defendant's right to use the trade mark in the Indian market. **LAVERGNE v. HOOPER** . . . **I. L. R., 8 Mad., 149**

190. ——— Refusal of registered letter.—Presumption of knowledge.—A person refusing a registered letter sent by post, cannot afterwards plead ignorance of its contents. **LOOTF ALI MEAH v. PHARIS MOHUN ROY** . **16 W. R., 223**

6. MISCELLANEOUS CASES.

191. ——— Order of Court made without jurisdiction.—Order of same Court for refund under execution.—Where a Court on the application of a decree-holder made an order for execution, and such order was set aside (on appeal) on the ground that such Court had no jurisdiction to entertain the application, *Held* that the decree-holder, having invoked the jurisdiction of the Court, was estopped from calling in question an order subsequently passed by it, directing him, to refund a sum realised under the order for execution. **GOVIND VAMAN v. SAKHARAM RAMCHANDRA**

[**I. L. R., 3 Bom., 42**]

192. ——— Party not bound by proceedings not allowed to take advantage of them.—Where a person who was called as a witness and set up a claim in execution proceedings, was not made a party, and was therefore not bound by those proceedings, it was held that in a subsequent suit against him for possession (he having obstructed execution of the former decree), in which suit he contended that the suit was barred as not having been brought within due time after the plaintiff's application in the execution proceedings was dismissed, he could not take advantage of the execution proceedings to resist a claim otherwise admissible against him. **BALVANT SANTARAM v. BARAJI BIN SANTHOPA**

[**I. L. R., 8 Bom., 602**]

193. ——— Acting on order containing reservation.—Disputing validity of reservation.—Where an application for leave to institute a suit was granted under clause 12 of the Charter, leave being reserved in the order to the defendant to move to have it set aside, and the plaintiff had acted on the order, *Held* he could not afterwards object to the validity of the reservation it contained. **RADEA BIBI v. MUCKSOODUN DASS** . **21 W. R., 204**

194. ——— Fictitious sale.—Relief.—Promoting public policy.—*Held* that though the law

ESTOPPEL—continued.**6. MISCELLANEOUS CASES—continued.****Fictitious sale—continued.**

under the ordinary rule would not assist parties who have colluded in order to evade its provisions, by restoring them to their original status, yet relief may be granted if public policy is promoted by so doing. **RAM PRESHAD v. SHEVA PRESHAD**

[1 Agra, 71

195. — Repudiation of authority of guardian.—Adoption of beneficial acts.—A person who disputes the authority of another to act as his guardian, and repudiates the acts done by such guardian in that capacity, cannot take advantage of those acts so far only as they are beneficial to him. **SOOBAN PRITHEE LALL JHA v. SOOBAN DOORGAH LALL JHA. SOOBAN DOORGAH LALL JHA v. NEELANUND SINGH** **7 W. R., 73**

196. — Recognition of tenure by Government.—Purchaser, Right of.—The Government having once recognised the plaintiff's talook by selling it for arrears of rent to the parties through whom the plaintiff claimed, and no disclaimer of his talookdaree right having ever been made by the plaintiff, **Held** that it was not competent to the Government to deny the title of a tenure which it had by selling once guaranteed to the purchaser. **JEEBUN SINGH BURMOH v. COLLECTOR OF BACKERGUNGH** **2 W. R., 77**

GOLUCK CHUNDER SHIN v. COLLECTOR OF BACKERGUNGH **2 W. R., 139**

197. — When the zemindari rights in a property have been purchased by Government at a sale for arrears of revenue, and Government guarantees the rights and position of certain talookdars therein, and then sells its zemindari rights, the second purchaser is bound by the acts of the Government, and the talookdars, if dispossessed, may recover possession under clause 6, section 23, Act X of 1859. **BURNEE KHANUM v. MODHOOSOODUN DASS** [3 W. R., Act X, 127

JOOGUL KISHORE ROY v. AHSANOULLAH [4 W. R. Act X, 6

198. — Sale of mortgaged property in execution of decree.—Effect of sale.—Purchaser, Right of.—Where mortgaged property is sold in execution of a decree in a suit brought upon the mortgage, the interest of the mortgagee, at whose instance the sale is made, is held to pass to the purchaser, and the mortgagee is estopped from disputing that such is the effect of the sale. **KHEVRAG JUSRUP v. LINGAYA** **1 L. R., 5 Bom., 2**

199. — Effect of sale.—Purchaser, Right of.—Where a decree is obtained upon his mortgage by a mortgagee and the mortgaged property is sold under the decree for the purpose of paying off the mortgagee, the interest of both mortgagor and mortgagee passes to the purchaser. The mortgagee is estopped from disputing that such is the effect of the sale, so far as his interest is concerned, although the officer of the Court may only have described the sale as one of the right, title, and interest

ESTOPPEL—continued.**6. MISCELLANEOUS CASES—continued.****Sale of mortgaged property in execution of decree—continued.**

of the mortgagor. It is not the practice, in the mofussil, to require the mortgagee to convey to the purchaser. The transfer takes place by estoppel. **SHESHEGIRI SHANBHOG v. SALVADOR VAS**

[1 L. R., 5 Bom., 5

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See EXTRADITION ACT, 1879.
[1 L. R., 9 Bom., 333

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[1 L. R., 9 Bom., 288, 333

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[1 L. R., 7 All., 490
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1. — Opportunity to plead being European British subject.—Plea not taken till too late.—Waiver.—A Deputy Magistrate ought to give an opportunity to a prisoner to plead that he is a European British subject. The mere statement of a prisoner that he is a European British subject, made before the Deputy Magistrate after the trial was completed, cannot be acted on. **CLARK v. BEANE** [5 W. R., Cr., 53

2. — Mode of procedure.—Charge against European British subject.—Mode of procedure by a Magistrate with regard to European British subject accused of an offence. **QUEEN v. SHERIFF** **6 W. R., Cr., 13**

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1. MODE OF DEALING WITH EVIDENCE.

1. ——— Discussion of mode of dealing with.—The mode in which evidence is to be dealt with discussed. *MATHURA PANDEY v. RAM RUCHA TEWARI*. 3 B. L. R., A. C., 108: 11 W. R., 482

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[3 B. L. R., A. C., 332

2. ——— Conflicting evidence, Investigation of cases of.—There is no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best accords with those facts according to the ordinary course of human affairs and the usual habits of life. *USUDOOLAH v. IMAMAN*

[5 W. R., P. C., 26: 1 Moore's I. A., 19

EVIDENCE—CIVIL CASES—continued.**1. MODE OF DEALING WITH EVIDENCE**
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3. ——— Native testimony.—*Suspicion of perjury.*—Evidence should receive its due weight, and not be rejected from a general distrust of native testimony, nor perjury widely imputed without some grave grounds to support the imputation. **RAMAMANI AMMAL v. KULANTHAI NAUGHAR**

[17 W. R., 1: 14 Moore's I. A., 848

4. ——— Probability.—*Ground for decision on evidence.*—The general fallibility of native evidence in India is no ground for concluding against a transaction when the probabilities are in favour of it. **BUNWARAN LALL v. HETNARAIN SINGH**

[4 W. R., P. C., 128: 7 Moore's I. A., 148

5. ——— Native cases.—*Presumption.*—*Case supported by false evidence.*—A native case is not necessarily false and dishonest because it rests on a false foundation, and is supported in part by false evidence. **WISE v. SUNDULOONISSA CHOWDHREE**

[7 W. R., P. C., 13: 11 Moore's I. A., 177

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[17 W. R., 1: 14 Moore's I. A., 848

6. ——— Judgment on facts.—*Probabilities of the case.*—*Rule of Privy Council.*—Where a Judge, whose judgments have been observed to be very careful, comes to a conclusion on the weight of evidence as to a pure question of fact, the High Court would do wrong not to follow the principle laid down by the Privy Council, not to interfere in a judgment on facts, unless the conclusion be clearly shown to be a mistaken one. In this country, where native evidence, as a general rule, is fallible, it would be safe and proper to follow another principle laid down by the Privy Council, namely, to look to the probabilities of the case. **EDUN v. BECHUN**

[11 W. R., 345

7. ——— Sufficiency of evidence.—*Evidence which might have been but was not adduced, as being unnecessary.*—Where there is sufficient evidence of a fact, it is no objection to the proof of it that more evidence might have been adduced. **RAMALINGA PILLAI v. SADASIVA PILLAI**

[1 W. R., P. C., 25: 9 Moore's I. A., 508

8. ——— Consent to decision on such evidence as there is.—Even if the evidence upon the record is in itself insufficient, a Judge may properly decide the case upon that evidence, if the defendant consents to its being taken as sufficient. **SHREYUT PRESHAD MITTER v. JUNEJOY MULLICK**

[12 W. R., 244

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9. ——— Conflict between Judge's memoranda and recorded evidence.—Where there is a conflict between a Judge's memoranda of evidence and the recorded depositions of witnesses,

EVIDENCE—CIVIL CASES—continued.**1. MODE OF DEALING WITH EVIDENCE**
—continued.

Conflict between Judge's memoranda and recorded evidence—continued.

the Court must be guided by the latter. **HEERANATH KOORER v. BURN NARAIN SINGH**

[15 W. R., 375: 9 B. L. R., 274

10. ——— Documentary evidence, dealing with.—*General rules.*—When a document is tendered, it is the first business of a Court to satisfy itself whether the document is admissible at all. If not evidence between the parties, it should be rejected at once. If an admissible document comes under the class which requires proof, it should be distinctly noted that it is admitted on the record subject to proof, in order that if no proof be offered, the opposite party may ask the Court to take it off the record. **MANSON v. GOLAM KARRIA MOONSHIE**

[15 W. R., 490

11. ——— Evidence not adduced in former suit.—*Ground for rejecting evidence.*—Documentary evidence tendered by a plaintiff cannot be rejected merely because it has not been adduced in a former suit to which plaintiff was a party. **PURNEJAN KHATOON v. BYKUNT CHUNDER CHUCKREBUTTY**

9 W. R., 380

12. ——— Production of false document.—*Duty of Court.*—The production in evidence of a forged document by a party to a suit does not relieve the Court from the duty of examining the whole evidence adduced on both sides, and of deciding the case according to the truth of the matters in issue. **SURNOMOYEE v. SUTTESCHUNDER ROY**

[2 W. R., P. C., 13

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[3 W. R., 57

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[2 W. R., Act X, 99

BENGAL INDIGO Co. v. TABINER PRESHAD GHOSH

[3 W. R., Act X, 149

13. ——— Alteration in document.—*Admissibility in evidence of altered document.*—If a document on which a case depends appears to have been altered, it cannot be received in evidence or be acted upon till it is most satisfactorily proved by all the subscribing witnesses at the least, and by other evidence, that the alteration was made antecedently to the signature. **PETAMBER MANICKJEE v. MOTHE-CHUND MANICKJEE**

5 W. R., P. C., 53

[1 Moore's I. A., 420

14. ——— Possession of title-deeds.—*Absence of proof of acquisition of possession.*—The mere fact of possession of title-deeds without any very satisfactory proof of the mode by which possession of them was acquired, was held by the Privy Council to be outweighed by the other adverse circumstances of the case. **KRIPAMOYEE DEBIA v. ROMANATH CHOWDHRY**

2 W. R., P. C., 1

EVIDENCE—CIVIL CASES—continued.**1. MODE OF DEALING WITH EVIDENCE—continued.****Possession of title-deeds—continued.**

KRIPAMOYEE DEBIA v. GIRISH CHUNDER LAHOREE
[8 Moore's I. A., 467]

15. ——— **Reasons for disbelief.**—*Omission to give reasons for not believing evidence.*—Where the lower Appellate Court was directed by the High Court to try a particular point, *viz.*, whether the plaintiff had proved actual possession within twelve years of suit, and the Court, in dealing with the evidence, observed that it would not rely on private documents and on the witnesses, as "they were not of much importance, and were easily procured," and rejected survey papers coming from proper custody, as being papers easy to alter, and therefore not reliable, the High Court, in remanding the case, held that this was a most improper mode of treating the evidence. If the Court disbelieved particular witnesses or refused to receive certain documents, it should give its reasons for the refusal with reference to these documents in particular, or for its disbelief of the particular witnesses, and not with reference to documents or witnesses in general. CHANDRA MADHAB ROY v. KHEMAMANI DASI . 1 B. L. R., S. N., 19

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[1 B. L. R., S. N., 25: 10 W. R., 256]

18. ——— **Unopposed evidence.**—*Suit for damages.*—*Non-appearance of defendants.*—In a suit to recover damages caused by the defendants plundering the house of the plaintiff, the Court of first instance passed, upon the evidence of two witnesses, a decree in favour of the plaintiff. On appeal by some of the defendants, the Judges of the Sudder Dewanny Adalat of Agra held that the fact of plunder was not proved, and dismissed the suit as against all the defendants. *Held* by the Privy Council that, as the defendants did not come forward to exculpate themselves by their own evidence, and as the evidence in support of the charge was unopposed, the decree of the Court of first instance could not be set aside. GANESH SINGH v. RAM RAJA

[8 B. L. R., P. C., 44: 12 W. R., P. C., 38]

2. ACCOUNTS AND ACCOUNT BOOKS.

17. ——— **Books kept in course of business.**—Books proved to have been regularly kept in course of business are admissible as corroborative but not independent proof of the facts stated. DWARKA DASS v. DWARKA DASS . 2 Agra, 306

18. ——— **Account books.**—*Act II of 1855, s. 43.*—The books of a creditor are not admissible as evidence against his debtor to prove the debt, unless there is other evidence of the debt; in which case entries in such books may be admitted as corroborative evidence under Act II of 1855, section 43. RAMKISTO PAUL CHOWDHRY v. HURRY DASS KOONDOD . Marsh., 219: 1 Hay, 569

19. ——— **Evidence Act, s. 34.**—It is only such books as are entered up as transactions take place that can be considered as books re-

EVIDENCE—CIVIL CASES—continued.**2. ACCOUNTS AND ACCOUNT BOOKS—continued.****Account books—continued.**

regularly kept in the course of business within section 34 of the Evidence Act. MUNCHERSHAW BEZONJI v. NEW DHURUMSEY SPINNING AND WEAVING COMPANY . I. L. R., 4 Bom., 576

20. ——— **Effect of account books.**—One party, by merely producing his own books of account, cannot bind the other. SOBABJEH VACHA GANDA v. KOONWARJEH MANIKJEH
[5 W. R., P. C., 29: 1 Moore's I. A., 47]

21. ——— **Entries in account books.**—*Evidence Act, s. 32, cl. 2, and s. 34.*—*Account books kept on behalf of firm by servant or agent.*—*Admission.*—Account books containing entries not made by nor at the dictation of a person who had a personal knowledge of the truth of the facts stated, if regularly kept in course of business, are admissible as evidence under section 34 of the Evidence Act I of 1872, and *semble* under section 32, clause 2. Account books, though not proved to have been regularly kept in course of business, but proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm. QUEEN v. HANMANTA
[I. L. R., 1 Bom., 610]

22. ——— **Evidence Act, s. 145.**—*Statement.*—A. was employed by B. at intervals of a week or fortnight, to write up B.'s account books, B. furnishing him with the necessary information either orally or from loose memoranda. *Held* that the entries so made could not be given in evidence to contradict A., under section 145 of the Evidence Act, as to previous statements made by him in writing. The statements were really made, not by A. but by B., under whose instructions A. had written them. MUNCHERSHAW BEZONJI v. NEW DHURUMSEY SPINNING AND WEAVING COMPANY . I. L. R., 4 Bom., 576

23. ——— **Absence of entry in a book irrelevant.**—*Evidence Act I of 1872, s. 34.*—Though under section 34 of the Evidence Act the actual entries in books of account regularly kept in the course of business are relevant to the extent provided by the section, such a book is not by itself relevant to raise an inference from the absence of any entry relating to a particular matter. QUEEN-EMPRESS v. GRISH CHUNDER BANERJEE
[I. L. R., 10 Calc., 1024]

24. ——— **Where a Judge considered it inequitable to reject plaintiff's books when they made for him, viz., as to amounts lent to defendant, and to accept them when they were against his interest, viz., in the amount of repayments credited to defendant, and therefore disregarded both descriptions of entries equally, but gave a decree in plaintiff's favour for such entries as were proved, without deducting the items credited to defendant.**—*Held* that entries in an account book, whether on the credit or debit side of the account, are not conclusive evidence either of amounts paid or of sums actually due

EVIDENCE—CIVIL CASES—continued.**2. ACCOUNTS AND ACCOUNT BOOKS—continued.****Entries in account books—continued.**

which the Judge is bound to believe. The Judge was bound to look at the whole of the entries in the plaintiff's book, to give credit to such of them as he believed to be true, and to discredit those, if any, which he believed to be false. *ISAN CHANDRA SINGH v. HARAN SINGH*

[3 B. L. R., A. C., 135: 11 W. R., 525]

25. Entry against interest of witness.—In a suit for account by the representatives of A., deceased, a document was offered as evidence purporting to be a copy made by deceased of an account furnished him by the defendant containing an entry of a payment of Rs5,000 by the deceased to the defendant, and the purchase therewith by the defendant of Company's paper for the deceased. *Held* that, by itself, the document was inadmissible. But when further evidence was given by a witness that the deceased had stated to him that the document was a correct statement of his account with the defendant, *Held* that such evidence was admissible; and that, with the addition of this evidence, the document also was admissible as containing an entry by the deceased against his interest. But, *quære*, whether the circumstance that the entry only indicated a conversion of the money into a new shape did not take away the character of its being an entry against interest. *ZAYNUB v. HADJEE BABA CAZIRANEE*

[2 Ind. Jur., N. S., 54]

26. Hat-chitta book.—*Evidence against vendors.*—A hat-chitta book is a document kept especially as a security for the vendor; and in the absence of fraud it must be considered binding upon him. *GOPEMOHUN ROY v. ABDUL RAJAH SURJUN NACODA*. 1 Ind. Jur., N. S., 368

27. Disputed items of account, Proof of.—In an action by a banking firm against another firm to recover a balance upon an account between them, the plaintiff put in evidence the account books of his firm, and the Inspector of the Court certified that the books were regularly kept, consistently with the rules of banking, and that they agreed with the account rendered by the plaintiff to the defendant. The plaintiff, however, examined no witness to prove that the books were regularly kept, or the general accuracy of the particular charges constituting the demand: he proved admissions by the defendant of the correctness of the account, and of an award in his favour of one of the disputed items. The defendant in his defence did not deny the accuracy of the plaintiff's account, or of the books put in evidence, but objected to two items of the account, and claimed a set-off, but examined no witnesses to rebut the plaintiff's case. *Held* (reversing the Sudder Court's decree) that although the plaintiff's books and the Inspector's report were not conclusive evidence, yet that the necessity of strict proof was removed by the admission of the defendant, and the fact of the absence by him of any evidence to impeach the accuracy of the accounts, the disputed items being satisfactorily accounted for. *DWARKA DASS v. JANKEE DOSS*

6 Moore's L. A., 88

EVIDENCE—CIVIL CASES—continued.**2. ACCOUNTS AND ACCOUNT BOOKS—continued.**

28. Account books of factory.—*Payment of rent.*—The account books of a factory, regularly sworn to by the manager, are legal evidence of payment of rent. *KALSH KANT MOJOMDAR v. WATSON*. 2 W. R., Act X, 75

29. Evidence Act, 1872, s. 34.—Factory books cannot be used as independent primary evidence of the payment to which the entries refer;—Act I of 1872, section 34. *QUEEN v. HURDEEF SANGH*. 23 W. R., Cr., 27

30. Pymaish accounts.—*Evidence of right to property.*—An entry in the pymaish accounts is not, *per se*, sufficient evidence to establish a right to property which is denied. *KESHAVAN v. VASUDEVAN*. I. L. R., 7 Mad., 297

31. Accounts.—*Evidence of reputation as to ownership of property.*—*Suit to recover forest tracts from Government.*—In a suit by a zemindar to recover certain forest tracts from Government, the plaintiff relied on certain accounts called Ayakut accounts as furnishing proof of the inclusion of the said tracts within the limits of his zemindari. The District Judge refused to accept these accounts as evidence of reputation, because no evidence was produced to show for what purpose, by whom, and in what circumstances, these accounts were prepared, and what guarantee existed to ensure their accuracy. *Held* that inasmuch as they were from time to time prepared for administrative purposes by village officers and were produced from proper custody and otherwise sufficiently proved to be genuine, they were admissible as evidence of reputation. No distinction can be drawn between evidence of reputation to establish and to disprove a public right. *SIVA SUBRAMANIAM v. SECRETARY OF STATE FOR INDIA* [I. L. R., 9 Mad., 285]

32. Partnership books.—*Act II of 1855, s. 53.*—A. & Co. and B. & Co. entered into a joint adventure in opium. A. & Co. were to send money to various places to be handed to the agents, who were to buy and sell. They now claimed against B. & Co. for money alleged to have been so sent after giving credit for sums received. The proof was the arrival of the money at A. & Co.'s places of business supported by entries in A. & Co.'s books at each place, but there was no proof of payment to the agents save such entries. As to remittances to the other places, the only evidence was the books of A. & Co. at the place of despatch. *Held* that there was no evidence as to the latter claims; and as to the former, although the evidence appeared insufficient, the case would not be remanded, as the appellant, independent of these claims, had a balance against them. *SETH LAKHMI CHAND v. SETH INDRA MULL*

[4 B. L. R., P. C., 31: 13 W. R., P. C., 36
13 Moore's L. A., 365]

33. Account books of banking firm.—*Suit for money unaccounted for.*—*Proof of payment.*—Where the fact of payments by a banking

EVIDENCE—CIVIL CASES—continued.**2. ACCOUNTS AND ACCOUNT BOOKS—continued.****Account books of banking firm—continued.**

firm is distinctly put in issue, the books of the firm being at most corroborative evidence, the mere general statement of the banker to the effect that his books were correctly kept is not sufficient to discharge the burden of proof that lies upon him; particularly if he has the means of producing much better evidence. In a suit to recover moneys unaccounted for, where defendants plead payments endorsed on documents, and the endorsements purport to have been signed by the plaintiffs, the formal and regular method of proof is to call on the plaintiffs to admit or deny their signatures, and then to call upon witnesses to state whether they saw the plaintiffs sign or could speak to the handwriting, or generally what took place. *GUNGA PERSHAD v. LINDERJIT SINGH* . . . 23 W. R., P. C., 380

34. — Bankers' account books.—

Suit against representatives of customer for balance of account.—In an action by bankers against the representatives of a deceased customer to recover a balance of an account alleged to be due to the plaintiff by the deceased at the time of his death, the production of the bankers' books, with the entries of the items constituting the demand, kept according to the established custom of mahajuns in India, is not of itself sufficient evidence to establish such a claim, strict proof of the debt being required. *RAI SRI KISHEN v. RAI HURI KISHEN*

[5 Moore's I. A., 432]

35. — Suit for balance of unadjusted account.

—In a suit for a sum of money on an unadjusted account, plaintiff filed a memorandum (A) with her plaint, from which the amount claimed in the plaint could not be made out. In her examination by the Court the plaintiff put in another memorandum (C) to explain memorandum (A). Defendant admitted that memorandum (C) was signed by him. It had reference to a period immediately preceding that for which the suit was brought. *Held*, that memorandum (C) was rather evidence to support the originally stated cause of action, than an amendment of the claim or the substitution of one claim or cause of action for another. The case was one which should have been decided not merely on the discrepancy between the two statements made by plaintiff, but on the whole of the evidence. The mere omission of an accountable party, framing his own account, to carry forward into a new account a balance against himself existing in a former one can constitute no evidence in his own favour. To prove the existence of the balance, such omission might be considered in conjunction with other evidence in the cause. *MULKA MUKHEDRA, BEGUM OF EX-KING OF OUDH, v. TEKANTH ROY* . . . 14 W. R., P. C., 24

36. — Suit for balance of account.

—*Dekkan Agriculturists' Relief Act (XVII of 1879) s. 56.*—Signed balance of account.—*Attestation of account.*—A balance of account signed by an agriculturist is an instrument which purports to evidence an obligation for the payment of money, and cannot,

EVIDENCE—CIVIL CASES—continued.**2. ACCOUNTS AND ACCOUNT BOOKS—continued.****Suit for balance of account—continued.**

therefore, be admitted in evidence, unless written by, or under the superintendence of, and attested by, a village registrar, as required by section 56 of Act XVII of 1879. *KANFI LADHA v. DHONDE KONDARI*
[I. L. R., 6 Bom., 729]

3. ACCOUNT-SALES.

37. — Account sale.—*Goods consigned from London.*—A. at Calcutta consigned goods through B. at Calcutta to C. at London for sale on his (A.'s) own account and risk. B. advanced money thereon to A. The goods were sold in London by C., who sent the account-sale to B. in Calcutta. In a suit by B. against A. in Calcutta for the balance due to him on account of the money so advanced after giving credit to A. for the amount realised by the sale of the goods according to the account-sale,—*Held* that the account-sale was *prima facie* conclusive of the amount realised; and if A. wished to falsify the account, the onus lay upon him. *DOOMUN v. STEVENS* . . . 2 Ind. Jur., N. S., 5

38. — Consignment of goods to foreign market.—*Implied contract.*—Where goods are consigned to be disposed of in a foreign market, it is an implied term of the agreement by the consignor that the account-sales furnished by the correspondents abroad shall be taken as *prima facie* evidence of what the goods realised. *Held* that this was so even though the consignor objected to the correctness of the account-sales when furnished to him. *HODGSON v. RUPCHAND HAZARIMUL*

[6 Bom., O. C., 39]

39. — In an action brought by the plaintiffs for the balance due to them from the defendant in respect of shipments which had been treated by the plaintiffs as consignments on the defendant's account, account-sales furnished by plaintiffs to the defendant were held to be *prima facie* evidence of the amount realised by the sale of the goods mentioned therein. *SHARMAN v. FLEMING* . . . 5 B. L. R., 619

4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS.**(a) GENERALLY.**

40. — Decree of competent Court.—*Presumption.*—The decree of a competent Court must be presumed to be valid and binding on the parties, until the party attacking the decree clearly shows that it was improperly obtained by reason of fraud or misrepresentation practised upon the Judge by the party obtaining the decree. *RAJNARAIN DUTT v. GOUD MONER DOSSAN* . . . 6 W. R., 215

41. — Proceedings and decree in former suit.—*Decision as to execution of will.*—Where plaintiff and defendant respectively put in as evidence different portions of the proceedings in a

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(a) GENERALLY—continued.****Proceedings and decree in former suit—continued.**

former suit, and found arguments thereon, the Court is bound to use them all as evidence. The finding of a Civil Court as to the execution of a will is not conclusive evidence on the point, if the question of its execution was not a material issue in the suit. **BEER CHUNDER ROY v. TUMERZOODEN** . 12 W. R., 87

42. ——— Decree in previous suit.—Admissibility of, in evidence.—Effect of a previous decree, as evidence in a subsequent suit, stated. **RAMJAN KHAN v. RAMAN CHAMAR**

[I. L. R., 10 Cal., 89]

43. ——— Decree as to authenticity of deeds.—A Judge may lawfully employ a former decision for the purpose of showing that documents which bear such a distant date that their attestation or proof in the usual form is impossible, had been used publicly on a former occasion in the same Court when they had been found to be authentic, though such decision is not evidence in the case. **NAGUR SINGH v. MURHUND KHAN SIRDAR**

[11 W. R., 309]

44. ——— Decree as to situation of ohur for a portion of which suit is brought.—A former decision as to the situation of a chur, when an eight-annas share was in dispute, is not binding as an estoppel, although it is strong evidence in a suit in which the other moiety is disputed. **NAZIMOODDEN AHMED CHOWDERY v. WISE**

[5 W. R., 282]

45. ——— Decree for possession.—Suit under Act XIV of 1859, s. 15.—A decree for possession in a suit under section 15 of Act XIV of 1859 is *prima facie* evidence that the plaintiff in that suit is entitled to recover from the defendant therein mesne profits for the period of dispossession. **RADHA CHURN GHATAK v. ZAMIBUNNISSA KHANUM**

[2 B. L. R., A. C. 67: 11 W. R., 83]

Reversing on appeal under Letters Patent,

ZAMURDOONISSA v. RADHA CHURN GHUTTUCK

[9 W. R., 590]

46. ——— Decree in summary suit.—Suit for arrears of rent.—In a suit for arrears of rent, decrees in summary suits against the defendant for rent for years subsequent to those in respect of which the rent is claimed, are no evidence of such rent being due; but such a decree is *prima facie* evidence in support of a claim for rent for the next ensuing year. **AFSUROODEN v. SHOROOSHEE BULA DABEE**, . Marsh., 558: 2 Hay, 664

47. ——— Decree declaring amount of rent payable.—Suit for rent.—A decree in a former suit declaring the rent payable by a ryot is evidence of the rent still payable by him unless

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(a) GENERALLY—continued.****Decree declaring amount of rent payable—continued.**

rebutted by him by proof of change in the rent. **CHUNDER COOMAR ROY v. ZERMUNTOOLLAH SIRDAR** [W. R., 1864 Act X, 95]

MONMOHENE DEBEE v. BINODE BEHAREE SHAHA 25 W. R., 10

48. ——— Proceedings in former suit.—Reversed decree.—Where a plaintiff had been successful in both the lower Courts, and the decree which he had obtained was only reversed by the High Court on the ground that he was not entitled to the particular relief asked for, without the finding of the lower Appellate Court and the pleadings of the parties being displaced, *Held* that it was open to the plaintiff, in a subsequent suit against the same defendant, framed in a different way, to adduce the proceedings in the former suit as evidence for what they were worth. **MOHESH CHUNDER BROHMOOKARRE v. DINO BUNDHOO BOSE** 24 W. R., 265

49. ——— Decision between co-defendants.—Admissibility of decree in former suit.—*Evidence Act, s. 13.*—A finding in a former suit, in which the question was tried between all the parties to the present suit, was held to be admissible as evidence in this suit under the Evidence Act, section 13, although the plaintiffs and defendants in the present suit were in form co-defendants in the former. **GUTTEE KOIBURTO v. BHUKUT KOIBURTO**

[22 W. R., 457]

50. ——— Decision of Appellate Court where there is a decision of High Court in different proceedings on same point.—Decree declaring decree a simple money-decree, and one creating a lien.—The decision of the High Court that a certain decree was only a money-decree and carried no lien, has not any binding effect on a previous decision of a lower Appellate Court in another suit between different parties relating to other lands sold under the same decree in which it was held that the decree gave a lien on the property sold, and the Appellate Court's decree was entitled to be treated as one in full force, notwithstanding the subsequent High Court decision. **MAHOMED DANISH v. MAHOMED KARM** 25 W. R., 111

51. ——— Former suit for partition.—Partition of property as evidenced by deed without possession under it.—A partition of property between members of a family, though evidence that the property is probably theirs, is no evidence against a third party unless it is shown that there has been some possession in accordance with the partition. **DOORGA PRESHAD SINGH v. OPENDRONATH CHOWDHRY** 21 W. R., 145

52. ——— Depositions of witnesses in former suit in Collector's Court.—Evidence of relationship of landlord and tenant.—In a suit

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(a) GENERALLY—continued.****Depositions of witnesses in former suit in Collector's Court—continued.**

for arrears of rent of land for which no rent has ever been paid, where the plaintiff asks also for assessment of the rate of rent, and where the tenure had commenced thirty years previously and had been in the possession of defendant's grandfather, father, and himself without any rent having been paid,—*Held* that, in deciding whether the relation of landlord and tenant existed between the parties, the Civil Court was entitled to look at evidence taken in the Collector's Court, being that of witnesses who had been examined and cross-examined by the present defendant when the suit was originally tried there. **KEDAR NATH CHUCKERBUTTY v. GOPPEE NATH GHOSH** **23 W. R., 426**

53. ——— Depositions of witnesses in former suit.—Different parties.—Copies of depositions given in suits in which defendant was not a party, cannot be treated as evidence in a case in which he is a party. **SHUMBO GEER GOSSAIN v. RAM JEWAN LALL** **8 W. R., 509**

54. ——— Copy of hushabood.—Different parties.—An authenticated copy of a hushabood of 1209 B.S., of which the original was put into the Collectorate by the zemindar according to Regulation VIII of 1800, was held to be no evidence against third parties, defendants in a rent suit. **RAM NURSING MITTAR v. TRIPOORA SOONDREY DASSIA** **9 W. R., 105**

(b) UNEXECUTED, BARRED, AND EX PARTE DECREES.

55. ——— Decree for kabuliati.—Unexecuted decree.—Evidence of amount of rent.—A decree for a kabuliati for arrears of rent is evidence of the rent which the judgment-debtor is liable to pay only when he is called upon to execute such kabuliati, not where the decree has never been executed, and no kabuliati has ever been given. **HEERA LALL SEAL v. JOHNER MOLLAN** . **20 W. R., 278**

BANEE MADHUS BANERJEE v. BHAGUT PAL **[20 W. R., 466]**

MAHOMED AKBAR v. REILY **24 W. R., 447**

MISNER v. NASER ALI **21 W. R., 33**

56. ——— Decree assessing rent.—Evidence on question of title.—A decree of the High Court declaring plaintiff's right to assess rent upon land held by defendant as lakhiraj, is a binding decision between the parties on the question of title, even though incapable of execution by reason of lapse of time, and should not be excluded from consideration by the Deputy Collector. **RAMSOONDREY DABEE CHOWDRAIN v. RAM PERSHAD SADHOO** **[8 W. R., 283]**

57. ——— Decree barred by limitation.—Decree for rent.—Evidence of rate of rent.—A decree for rent is admissible in evidence against

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(b) UNEXECUTED, BARRED, AND EX PARTE DECREES—continued.****Decree barred by limitation—continued.**

a defendant to prove the rate of rent he was liable to pay, although the decree has not been executed for three years, and has, therefore, become barred under the law of limitation. **BRECHUNDER MANIK v. RAMKISHEN SHAW**

[14 B. L. R., P. C., 370; 23 W. R., 128]

58. ——— Decree for rent.—Evidence of receipt of rent.—A decree for rent in a suit under Act X of 1859 against the defendant, an intervenor, which has remained unexecuted for more than three years, is not, in a subsequent suit, admissible in evidence to show that the defendant had not, during a period subsequent to the decree, been in *bond fide* receipt of the rent. **RAM SUNDER TEWARI v. SHIMUNT DEWASI**

[14 B. L. R., 371, note; 10 W. R., 215]

59. ——— Ex parte decree unexecuted and barred by limitation.—Evidence of title.—A decree *ex parte* becomes inoperative if not executed within the time allowed by law, and a party who obtains such a decree, having accepted his status at variance with that assigned to him under the decree for a term beyond limitation, cannot, at any subsequent period, rely upon that decree as proof of his title, nor can it be accepted as such by the Courts. **RAMJESAWAN RAI v. DEEP NARAIN RAI**

[Agra, F. R., 78; Ed. 1874, 60]

60. ——— Evidence of rent being due.—A decree obtained *ex parte* is, in the absence of fraud or irregularity, as binding for all purposes as a decree in a contested suit. Such a decree is admissible as evidence even though the period for executing it has expired. Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for the previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, as evidence of the rent due to him from the defendant,—*Held*, that the decree was properly admissible as evidence, though the plaintiff had not taken out execution upon that decree, and his right to take out execution was barred by limitation. **BRECHUNDER MANICKYA v. HURRISH CHUNDER DASS** **[I. L. R., 3 Cal., 383; 1 C. L. R., 585]**

61. ——— Ex parte decree.—A judgment adduced as evidence is not to be rejected merely on the ground of its having been *ex parte*. **ORON SHAHOO v. ANUND SINGH** **10 W. R., 257**

CHUNDER COOMAR DUTT v. JOY CHUNDER DUTT MOJOOMDAR **19 W. R., 213**

62. ——— Different parties.—An *ex parte* decree is admissible in evidence *quantum valeat*, even against a person who was no party to it. A decree obtained by one party against

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(b) UNEXECUTED, BARRED, AND EX PARTE DECREES—continued.****Ex parte decree—continued.**

another cannot be considered as conclusive evidence against the title of a third party. *HUNSA KOORH v. SHEO GOBIND RAOOT* . . . **24 W. R., 431**

63. ——— *Evidence in suit for rent.*—The fact of a decree in a rent-suit having been given *ex parte* does not detract from its value as evidence of the relationship of landlord and tenant between plaintiff and defendant, provided due notice has been served on the latter; and such a decree may be filed as evidence without the judgment on which it was founded. *TOOMY v. DURRUP SINGH* **[12 W. R., 473]**

64. ——— *Admissibility and effect of.*—Where a suit is tried *ex parte* and no issues of fact are raised beyond the general issue involved in the claim, the decree considered as evidence is only evidence that the amount decreed was at the time due from the defendant to the plaintiff. *GOYA PERSHAD AUBUSTEE v. TARINDER KANT LAHOREE CHOWDHRY* . . . **23 W. R., 149**

65. ——— *Decree under which nothing has been recovered.*—A decree is evidence even though nothing has been recovered under it. A Court is bound to consider the value of even an *ex parte* decree pending in appeal when it is tendered as evidence. *MAHOMED KANA MEAH v. RUM MAHOMED* . . . **24 W. R., 254**

66. ——— *Summary decrees.*—*Evidence of rate of rent.*—*Ex parte* summary decrees are no evidence of the rate of rent leviable. *ANNA PURNA DASI v. JOYKISTO MOOKERJEE* **[W. R., 1864, Act X, 107]**

MUFEEZOODDEEN alias BHALOO MEAH v. WOOLFUTOONISSA BIBER . . . **7 W. R., 194**

67. ——— *Evidence of amount of rent.*—An *ex parte* decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property. Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for a previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, and which he also alleged had been duly executed, as evidence of the amount of rent due to him by the defendant, but it appeared that the lower Court had found that the alleged execution proceedings were fraudulent, and that no steps had been taken which gave finality to the decree,—*Held* that the decree was not conclusive evidence of the amount of rent due from the defendant, or of the questions with which it dealt. *Birchunder Manickya v. Hurrish Chunder Dass, I. L. R., 3 Cal., 283*, distinguished. *NILMONKEY SINGH v. HEERA LALL DASS* **[I. L. R., 7 Cal., 23; 8 C. L. R., 257]**

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(c) DECREES AND PROCEEDINGS NOT INTER PARTES.**

68. ——— *Former decrees and proceedings.*—*Different parties.*—Decrees and proceedings to which the defendants were not parties are not admissible as evidence against them. *SUTTO SURN GHOSAL v. DHONE KRISTNO SINGAR* . **1 W. R., 68**

MAHOMED ALI v. SHUBUM ALI . **8 W. R., 423**

LALL SINGH v. MODHOOSUDUN ROY **[8 W. R., 426]**

JOY PROKASH SINGH v. AMENE ALLY **[9 W. R., 91]**

SURUT SOONDUREE DEBIA v. RAJENDUR KISHORE ROY CHOWDHRY . **9 W. R., 125**

MOHA MOTEE DOSSHE v. JOODHISTER DEB **[10 W. R., 112]**

SHEO DYAL POORER v. MOHABEE PERSHAD **[10 W. R., 477]**

AMEERHOONISSA KHATOON v. JUGGERNATH ROY **[11 W. R., 113]**

KASHEE CHUNDER MOJOOMDAR v. SEETUL CHUNDER TULLAPATTUR . **17 W. R., 151**

MAHOMED BUX v. ABDOL KURREM ALIAS ABOO **[20 W. R., 453]**

ANUND MOHIM GHUTTUCK v. SOORJI KANTO ACHARJEE CHOWDHRY . **22 W. R., 538**

LALLA MOHADBO DYAL SINGH v. CHUNDER PERSHAD . . . **25 W. R., 57**

69. ——— *Judgment in former case.*—*Different parties.*—*Similar interest.*—A judgment in another case is of itself insufficient evidence against a party who had no part in it, even though his interests may be of a similar nature to those of the parties then suing. *DOST MAHOMED KHAN CHOWDHRY v. SOOLOCHANA DABIA* . . . **1 W. R., 270**

70. ——— *Different parties.*—*Inapplicability of English rule.*—Remarks on the admissibility in evidence of judgments in previous suits, and on the applicability in all its strictness to the Courts of this country of the English rule that, except in matters of general interest or public rights, a verdict in a previous suit, to be admissible, must be between the same parties, or parties through whom the parties actually in litigation claim. *DOORGA DOSS ROY CHOWDHRY v. NURENDRO COOMAR DUTT CHOWDHRY* . . . **6 W. R., 233**

71. ——— *Subsequent suit brought by strangers to former suit.*—The judgment in a former suit against the same defendants in respect of the same subject-matter is admissible, though not conclusive, evidence against the defendants in a subsequent suit brought against them by other parties. *LALA RANGLAL v. DEONARAYAN TEWARY* . . . **6 B. L. R., 69; 14 W. R., 201**

72. ——— *Judgment admissible against third party.*—A judgment *inter partes*

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(c) DECREES AND PROCEEDINGS NOT INTER PARTES—continued.****Judgment in former case—continued.**

may be received in favour of a stranger as against a party thereto, not as concluding such party, but as evidence for what it is worth. *BYRUB NATH TYE v. KALLY CHUNDER CHOWDEY*. . . 16 W. R., 112

73. — Decree not inter partes.—*Proceedings of Revenue Court.*—Decrees obtained by either party, to which the other was not a party, or the proceedings of the revenue authorities, though not binding, should be treated as evidence to which the Court should give such weight as it thinks proper. *COLLECTOR OF FURRUCKPORE v. KALBE DASS HAKARAH*. . . 17 W. R., 194

74. — Evidence to explain inconsistency.—Held that the Subordinate Judge was quite justified in using a decree between other parties to explain an apparent inconsistency between certain statements in the plaint and in the evidence of the plaintiff's witnesses, on the ground of which inconsistency the Munsiff had rejected that evidence. *RADHANATH DASS v. KHELLUT CHUNDER GHOSH*. . . 17 W. R., 558

75. — Ownership of property.—In a suit to have it declared that a certain house was the property of W., plaintiff's judgment-debtor, defendants contended that it had been the property of another person, and that they had purchased it in execution of a decree against that person. The lower Appellate Court found for the defendants on the basis of a decree dismissing a suit by W.'s representatives to have the property declared to be W.'s. Held that the decree could not bind the plaintiffs who were not parties to it. *GOLUCKMONTEE DEBIA v. RAMMONTEE BOSE*. . . 12 W. R., 21

76. — Evidence of possession.—Admissibility in evidence of decrees in former suit.—The plaintiffs, as purchasers of a share of an estate, sued to recover their share of the rent of certain tenures held in that estate by the defendants. The defendants denied being in possession as alleged. Another co-sharer in the same estate had previously brought a suit against the same defendants for the rent of the tenures, and in that suit the present plaintiffs and other co-sharers of the estate were made co-defendants, and the decision in that suit was that the present defendants were in possession and were liable to pay to the then plaintiff his share of the rent. Held (MITTER, J., dissenting) that the decree in the former suit was not admissible as evidence in the present suit. *SURENDER NATH PAL CHOWDEY v. BROJO NATH PAL CHOWDEY* [I. L. R., 13 Calc., 352]

77. — Decree in former suit showing lands were mal.—Suit by auction-purchaser for rent.—Evidence Act, s. 11.—Where the plaintiff, who was an auction-purchaser of a share in certain lands, sued for arrears of rent against the

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(c) DECREES AND PROCEEDINGS NOT INTER PARTES—continued.****Decree not inter partes—continued.**

owners of another share in the same, it was admitted that certain plots of the estate were held in exclusive possession. The defendants claimed these plots as lakheraj. The plaintiff put in evidence certain decrees in respect of such plots in which it was held, against the persons in possession at the time, that the lands were mal. Held that, having regard to the circumstances and the particular defence set up, that the decrees were admissible in evidence, not as showing that the lands were mal or lakheraj, but as showing that rent had been successfully claimed in respect of the lands. *HIRA LAL PAL v. HILLS* [11 C. L. R., 528]

78. — Rent suit.—Decree obtained ex parte against registered tenant.—In a suit for rent the plaintiff claimed that he was entitled to payment both in cash and kind, and, in order to show that he was entitled to recover rent in kind, tendered two *ex parte* decrees obtained by his predecessor against the persons registered as tenants of the tenure at the time the decrees were obtained, such decrees being for rent both in cash and kind. It appeared that the defendant was the owner of the tenure at the time the two decrees were passed, having acquired the tenure by foreclosure, although he had not registered the transfer in the plaintiff's books, and that he was not made a party to the suits in which the decree was passed. Held that as the defendant was not a party to the suits in which the decrees were obtained, and did not claim through the parties against whom they were passed, they were not admissible in the suit as evidence against him. The decision in *Sham Chand Koondoo v. Brojomath Pal Chowdhry*, 12 B. L. R., 484; 21 W. R., 94, does not lay down that a decree against a registered tenant is to be evidence for ever in future proceedings against an unregistered transferee not a party to it; but all that case decides is, that for the purpose of satisfying that particular decree an unregistered transferee is bound by it, whether he was a party to the suit or not, the tenure being liable for the rent. *RAM NARAIN RAI v. RAM COOMAR CHUNDER PODDAR* [I. L. R., 11 Calc., 562]

79. — Evidence of adoption.—In a former *bond fide* litigation to which the defendant was no party, the status of the plaintiff as an adopted son was in issue and disposed of in his favour. Held that that was good evidence of the adoption in this case, in the absence of better evidence for the defendant. *SEETARAM v. JUGGO-BUNDHOO BOSE*. . . 2 W. R., 167

80. — Evidence of adoption.—A decree to which the defendant was not a party is admissible as evidence of great weight, though not as an estoppel against him, on the question of the plaintiff's adoption, which was established by it in the presence of certain members of the plaintiff's family

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(c) DECREES AND PROCEEDINGS NOT INTER PARTES—continued.****Decree not inter partes—continued.**

who were interested in contesting its validity. **ANUNDNATH ROY v. THAKOOR DOSS MOZOOMDAR**

[2 Hay, 473]

81. ———— *Former suit on same matter between different parties.—Decision on public right.*—In a suit by the trustees of certain pagodas for the recovery of six villages on behalf of the pagodas from the defendant, the manager of the pagoda,—*Held* that the judgment in another suit—in which the cousin of a former manager sued him for a partition of certain villages, some of which were included in this suit, and in which it was decided that the manager was manager and not owner—was a decision upon a question of public right, and was receivable against the defendant. **KINDERSELEY, J.**, agreed generally, but doubted whether the judgment in the other suit was upon a matter of such general interest as to be good evidence against a stranger. **NALLATHAMBI BATTAR v. NILLAKUMARA PILLAI**

[7 Mad., 306]

82. ———— *Evidence Act, ss. 13, 43.*—In a suit to establish an itamee right to certain lands, the plaintiff produced certain transcript decisions of the Civil Court in suits in which a former holder of the tenure of the person who was said to have created the right was a party, but the lower Appellate Court rejected them as evidence, on the ground that the defendant was not a party to the suits. *Held* that the proceedings in such suits came within the meaning of "any transactions" in the Evidence Act, 1872, section 13, and were admissible as evidence in the case under section 43, not as conclusive, but as of such weight as the Court might think they ought to have. **NEAMUT ALI v. GOOROO DOSS**

[22 W. R., 365]

OMER DUTT JHA v. BUEN . . . 24 W. R., 470

83. ———— *Record of transaction by which rights of parties were recognised.—Evidence Act, s. 13.*—Where a suit was disposed of according to a compromise, of which the judgment set out the terms in the form of a recital,—*Held* that the judgment, though not in the ordinary form of a decree, was the record of a transaction by which the rights of the parties were recognised, and was therefore relevant as evidence under the provisions of Act I of 1872, section 13. **ROOP CHAND BHUKUT v. HUB KISHEN DASS** . . . 23 W. R., 162

84. ———— *Decision as to boundaries of land.*—Where the boundaries of a piece of land, as given respectively in a sale-certificate and in a plaint, serve to identify it as the land in respect of which a former decision has been passed, then, although the present holders of the land may not be the legal representatives of the persons who were bound by the former decision, yet the decision is entitled under section 13, Evidence Act, to consideration

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(c) DECREES AND PROCEEDINGS NOT INTER PARTES—continued.****Decree not inter partes—continued.**

as evidence in support of the plaint. **ANUND CHUNDER CHUND v. GUNEE GAZEE** . . . 25 W. R., 180

85. ———— *Road-cess papers.—Deed of sale.—Evidence Act, s. 13.*—Under the Evidence Act, section 13, road-cess papers and a deed of sale are evidence *quantum valeant*. So is a decree, although the party against whom it is treated as evidence was no party to it. **DAITABI MOHANTI v. JUGO BUNDEOO MOHANTI** . . . 23 W. R., 293

86. ———— *Decrees in former suits as to custom.—Evidence Act, s. 13.*—In determining the right to the office of audhikari of the Difu Sastur at Nowgong, where defendant claimed to be audhikari and alleged the headship was elsewhere, previous judgments or decrees involving instances in which the right and custom in question had been successfully asserted were held admissible in evidence under the provisions of Act I of 1872, section 13. **KOONDO NATH SURMA GOSSAMER v. DHEER CHUNDER SURMA ODHIKAR GOSSAMER** . . . 20 W. R., 345

87. ———— *Decision not inter partes.—Suit for confirmation of title and for sale.*—Plaintiff, as representing the decree-holder, sued for confirmation of title and for sale of the property in execution. Defendant's case was that he was purchaser for valuable consideration from the original judgment-debtor. The lower Appellate Court set aside this plea, on the ground that the High Court had declared in special appeal, in a previous litigation between defendant and another party, that the purchase in question was spurious, null, and void. *Held* that the decision of the High Court, though not binding and final evidence against the defendant in this suit, was sufficient to give plaintiff a *prima facie* case which, by the rules of pleading, it was for defendant to rebut. **ABDOOL KARHEM v. SUFFER ALEY** . . . 11 W. R., 118

88. ———— *Judgments not inter partes.—Suit for possession.—Evidence of character of possession.*—In a suit for possession of land, the defendant, in order to show the character of his possession, offered in evidence a judgment obtained by him in a suit to which the plaintiff or his predecessors in title were not parties. *Held* that the judgment was admissible in evidence. **PEARI MOHUN MUKERJI v. DROBOMOYI DABIA** . . . I. L. R., 11 Cal., 745

89. ———— *Liability of land for rent.*—In a suit for khas possession of land upon the allegation that the defendant refused to give up possession or to pay rent for it, a decree declaring that the land in suit was liable for rent was tendered in evidence. The decree had been obtained by an auction-purchaser against the defendants, but the plaintiff did not claim title through the auction-purchaser, who had in fact been treated as a trespasser and ejected. *Held* that the ruling in the case of

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(c) DECREES AND PROCEEDINGS NOT INTER PARTES—continued.****Judgments not inter partes—continued.**

Gujja Lal v. Fattah Lal, 1. L. R., 6 Cal., 171, governed the case, and that the decree was inadmissible in evidence. Although the case of *Hira Lal Pal v. Hills*, 11 C. L. R., 528, decides that in certain cases judgments not inter partes may be received in evidence, it does not lay down that such judgments can be treated as conclusive evidence of the facts with which they deal. *MOHENDRA LAL KHAN v. ROSOMOTI DASI* . . . I. L. R., 12 Cal., 207

90. ———— *Evidence Act, ss. 11, 13, and 40.—Admissibility of such judgment.*—The plaintiff sued to recover arrears of rent for a certain shop, alleging the annual rent to be Rs250. The defendant contended that it was only Rs60. The defendant and the plaintiff's brother were partners in business, and the plaintiff relied upon the evidence of his brother and on two entries in the firm's books in the writing of his brother. To prove the *bona fides* of the entries, the plaintiff tendered in evidence a judgment passed against the defendant in a suit brought by the defendant against the plaintiff's brother, charging him with having improperly debited their firm with Rs250 as the rent of the shop. *Held* that the judgment was not admissible as evidence against the defendant in the present suit. *Narasaji Bhikabhai v. Dipa Umed*, 1. L. R., 3 Bom., 3, distinguished. *RANCHHODDAS KRISHNADAS v. BAPU NARHAR* . . . I. L. R., 10 Bom., 439

91. ———— *Subjects of public nature.—Proof of custom of pre-emption.*—*Held* that in subjects of a public nature, such as to prove custom of pre-emption, &c., previous judgments between other parties are admissible as evidence, but must not be regarded as conclusive evidence. *TOTA RAM v. MOHUN LALL* . . . 2 Agra, 120

92. ———— *Evidence of custom.*—A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom that at the expiration of every twelve years the lands should be re-distributed by lot among the co-owners, and to have two of the shares delivered to him as one of the co-owners. In 1851 another co-owner had, in a suit to which only some of the present defendants were parties, obtained a decree for the periodical allotment of the lands; and in 1853 such decree, which clearly recognised the existence and validity of the custom, was affirmed on appeal. *Held* that, though the decree of 1851 was only a judgment inter partes, it was, as against such of the present defendants as were not parties to the former suit, cogent evidence of the existence and validity of the custom. *VENKATASWAMI NAYAKHAN v. SUBBA RAU. SANKARA SUBBAIYAN v. SUBBA RAU* . . . 2 Mad., 1

93. ———— *Proceedings not inter partes.—Evidence of possession.*—In a suit for possession, where plaintiff put in a copy of a soleh-

EVIDENCE—CIVIL CASES—continued.**4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—continued.****(c) DECREES AND PROCEEDINGS NOT INTER PARTES—continued.****Proceedings not inter partes—continued.**

namah to which defendant was not a party.—*Held* that although no question of right or title could be decided adversely to the defendant on the basis of that agreement, yet it would be evidence that by an order of Court passed on that solehnamah the plaintiff was put in possession. *SREEMUTTY DASSEE v. PELAKAM DASSEE* . . . 15 W. R., 261

94. ———— *Admissibility of proceedings between defaulting proprietor and third parties in suit by auction-purchaser at sale for arrears of revenue.*—An auction-purchaser at a sale for arrears of Government revenue does not derive his title from the defaulting proprietor, and proceedings between the defaulting proprietor and third parties with respect to the title to the land are not admissible in evidence in a subsequent suit brought by the auction-purchaser as against him. *RADHA GOBINDO KOER v. RAKHAL DASS MOOKERJEE* [1. L. R., 12 Cal., 82]

95. ———— *Roobookari.—Evidence Act, s. 13.*—A roobookari (Court proceeding) in a case in which certain decree-holders sought to attach the mokurree rights of an ancestor of the defendants in this jagheer, was held to be relevant evidence under the Evidence Act (I of 1872), section 13. *LUCHMERDEUR PATTUOK v. RUGHOOBUR SINGH* [24 W. R., 234]

5. HEARSAY EVIDENCE.

96. ———— *Evidence in cases of pedigree, death, and marriage.*—Hearsay evidence, though to be received with caution, is not inadmissible in questions of pedigree, and by the Mahomedan law is held to be good respecting death, descent, and marriage. In India, in cases of such description, the declarations of illegitimate members of the family, and also of persons who, though not related by blood or marriage to the family, are intimately acquainted with its members and state, is admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of the deceased members of the family. *GHURESH HOSSAIN CHOWDREY v. USEEMONNISRA KHATOON* [1 Hay, 528]

97. ———— *Declarations of deceased persons in cases of pedigree.—Evidence Act, II of 1855, s. 47.*—Section 47, Act II of 1855, does not refer to evidence of living witnesses, but to declarations of deceased persons in cases of pedigree, who, though not related by blood or marriage to the family, were intimately acquainted with its members and state. Such declarations, after the death of the declarant, are admissible as evidence in the same manner and to the same extent as those of deceased members of the family. *MOHIMA CHUNDER CHUND v. MOTHORANATH GHOSH* . . . 9 W. R., 151

EVIDENCE—CIVIL CASES—continued.**5. HEARSAY EVIDENCE—continued.**

98. ——— Statements of ancestor of parties.—*Suit for property as shebait.*—In a suit to recover property claimed by plaintiffs as shebait lately in possession, and wrongfully ousted therefrom, it was held that statements made by the ancestors of plaintiffs and defendants were receivable as evidence. **NUND PANDAH v. GYADHUR . \ . 10 W. R., 89**

99. ——— Evidence as to lands being mal.—The oral evidence of persons able from their position to testify as to certain lands being mal is not to be rejected as hearsay when they depose that they have known the lands to be mal for many years, and that defendant has been in the habit of paying rent for them. **DABEE PRESHAD CHATTERJEE v. RAM COOMAR GHOSAL . . . 10 W. R., 443**

100. ——— Admissions in relation to property.—*Evidence Act, s. 60.*—*Admissions of plaintiff's vendor.*—The admissions of a person whose position in relation to property in suit it is necessary for one party to prove against another, are in the nature of original evidence and not hearsay, though such person is alive and has not been cited as a witness. **ALI MOIDIN v. KOMBI ACHAR [I. L. R., 5 Mad., 239]**

101. ——— Evidence as to common report.—*Lunacy.*—Where the fact of lunacy was admitted, and the question was the date at which it commenced, the evidence of a planter in the neighbourhood as to common report for years in the village as to the lunacy having been admitted by the lower Court, the Judicial Committee refused to reject it. The rule as to admission of evidence laid down by Dr. Lushington in *Unids Rajaka Raja Bommarauze v. Pemmasamy Venkataadry Naidoo*, 7 Moore's I. A., 137, followed. **BODHARAIN SINGH v. UMBRAO SINGH. AJODHYA PRESAD SING v. UMBRAO SING**

**[6 B. L. R., 509; 15 W. R., P. C., 1
13 Moore's I. A., 519]**

6. JAMABANDI AND JAMA-WASIL-BAKI PAPERS.

102. ——— Jamabandi papers.—*Corroborative evidence.*—Jamabandi papers can be used only as corroborative evidence. **GAJJU KOBE v. ALLY AHMED . 6 B. L. R., Ap., 62; 14 W. R., 474**
NEWATEH v. LLOYD . . . 8 W. R., 464

103. ——— Independent evidence.—Jamabandi papers can never be treated as independent evidence of any contested fact. **CHAMARNEE BIBEE v. AYENOULLAH SIEDAR [9 W. R., 451]**

HEERA NATH v. SHUMSHREE SAHEE [1 N. W., 14]

104. ——— Evidence of rate of rent.—Where the jamabandi was shown not to have been acted upon, jamabandi papers are not, without other evidence, sufficient to support a claim for rent at the rate stated in them. **OOMED ALI v. MEHDEE HOSSAIN . . . 2 N. W., 2**

EVIDENCE—CIVIL CASES—continued.**6. JAMABANDI AND JAMA-WASIL-BAKI PAPERS—continued.****Jamabandi papers—continued.**

105. ——— Amount due by mortgagee.—Unless evidence be adduced to show the jamabandi papers to be unreliable, they may be taken as proof that the amounts entered in them are the amounts for which the mortgagee in possession may be called upon to account. **GUNGA PRESAD SINGH v. GUNGA KOONWAR . . 2 Agra, Pt. II, 210**

106. ——— Evidence of rate of rent.—*Held* that the entry in the jamabandi alone (though material evidence) is not sufficient to justify a decree for higher rent, if it be shown that the rent actually paid and received by the landlord or his agent for years was less than that therein stated. **MOWLAS KOONWAR v. SHIVA SAHAJ [1 Agra, Rev., 65]**

107. ——— Suit for mesne profits.—It is the practice of the Courts to accept the jamabandi papers which are filed by the putwaris under the zamindar's supervision as *prima facie* evidence of the profits of the estate, it being open to the mortgagee in possession to show that the amounts entered could not with due diligence be collected. **DEONARAIN SINGH v. NAREK PRESHAD [3 N. W., 217]**

108. ——— Evidence of amount of rent collected.—Jamabandi papers for the year in respect of which rent is claimed, made out by the officers of the person claiming the rent, cannot be evidence of his right to that which they set forth; though the evidence of the putwari (as being the officer usually charged with the duty of collecting the rent) as to the amounts collected in previous years, corroborated by the jamabandi of those years, would be conclusive in respect of the claim. **DHANOOKDHAREE SAHNE v. TOOMEY . 20 W. R., 142**

BRUGWAN DUTT JHA v. SHEO MUNGL SINGH [23 W. R., 256]

109. ——— Partition proceedings.—*Suit for arrears of rent.*—Jamabandi papers filed by a malik in butwarra proceedings to which the tenant is not necessarily a party, cannot be used as evidence against such tenant in a suit for arrears of rent. **KISHORE DOSS v. PURSUN MAHTOON [20 W. R., 171]**

110. ——— Jama-wasil-baki papers.—*Use of, as evidence.*—The use of jama-wasil-baki papers as evidence observed upon. **ROUSHAN BIBI v. HURRAY KRISTO NATH . I. L. R., 8 Cal., 926**
ALLYAT v. JUGGAT CHUNDER ROY [5 W. R., 242]

111. ——— Proof of their genuineness.—Jama-wasil-baki papers (when objected to by the other side) are not receivable in evidence, until some proof beyond mere conjecture is given of their genuineness and authenticity. **GOVIND CHUNDER ADDY v. ANLOO BEBEE . 1 W. R., 49**

EVIDENCE—CIVIL CASES—continued.**6. JAMABANDI AND JAMA-WASIL-BAKI PAPERS—continued.****Jama-wasil-baki papers—continued.**

112. ————— *Evidence Act, 1855, s. 43.—Corroborative evidence.*—Jama-wasil-baki papers ought not to be regarded as anything else than "books proved to have been regularly kept in the course of business;" and by section 43, Act II of 1855, they are "admissible as corroborative, but not as independent proof of the facts therein stated." They are consequently insufficient by themselves, and without independent proof, to rebut the presumption which arises under section 4, Act X of 1859, in favour of a defendant who has been found to hold lands at a uniform payment of rent for more than twenty years. **RAM LALL CHUCKERBUTTY v. TARA SOONDARI BURMONYA** . . . **8 W. R., 280**

113. ————— *Corroborative evidence.—Evidence Act, 1855, s. 43.*—Jama-wasil-baki papers are at the best corroborative evidence, not independent testimony. *Quere.*—Can such papers be dealt with as a "book," or be described as "kept in the regular course of business," within the meaning of section 43, Act II of 1855? **BEEJOY GOBIND BUREAL v. BHEEROO ROY** . **10 W. R., 291**

114. ————— *Corroborative evidence.—Evidence Act, 1855, s. 43.*—It is doubtful whether, under section 43, Act II of 1845, jama-wasil-baki papers are admissible as corroborative evidence. **SEBO SUHAYE ROY v. GOODURE ROY** [**8 W. R., 328**]

115. ————— *Evidence Act, s. 34.—Corroborative evidences.*—Under section 34 of the Evidence Act, jama-wasil-baki papers have no weight except as corroborative evidence. **SURNO-MOYI v. JOHUR MAHOMED MASYO** [**10 C. L. R., 545**]

116. ————— *Party holding in adverse title.*—Held that jama-wasil-baki and peshgi papers, though corroborative evidence against tenants, cannot be admitted as against a party holding under an adverse title. **MOHIMA CHUNDER CHUCKERBUTTY v. POORNO CHUNDER BANERJEE** [**11 W. R., 165**]

117. ————— *Right of witness preparing them to refresh his memory from them.*—Jama-wasil-baki papers are not admissible as independent evidence of the amount of rent mentioned therein; but it is perfectly right that a person who has prepared such jama-wasil-baki papers on receiving payment of the rents, should refresh his memory from such papers when giving evidence as to the amount of rent payable. **AKHIL CHANDRA CHOWDHRY v. NATU** . **I. L. R., 10 Cal., 248**

118. ————— *Evidence Act, 1855, ss. 39, 43, 45.—Right of witness to refresh memory from them.*—In a suit for enhancement of rent, a collection account or jama-wasil-baki filed many years previously by the plaintiff's predecessor in a suit to which the defendants are not parties, is not,

EVIDENCE—CIVIL CASES—continued. .**6. JAMABANDI AND JAMA-WASIL-BAKI PAPERS—continued.****Jama-wasil-baki papers—continued.**

per se, evidence for the plaintiff that the defendants' predecessor held at the rates of rent mentioned therein. *Semble.*—That, if proved to have been regularly kept in the way of business, the paper might have been put in as corroborative evidence under section 43 of Act II of 1855, or might have been used by the writer thereof to refresh his memory under section 45. *Semble.*—That, if it were shown that the writer was dead, or could not be found, the original might have been put in evidence under section 39. *Semble.*—That a series of collection accounts or jama-wasil-baki papers appearing to be regularly kept may be evidence and entitled to credit on the same principle as other contemporaneous records made and kept by the party producing them in the ordinary course of his business. **KHEERO MONEE DASSEE v. BEEJOY GOBIND BUREAL** . . . **7 W. R., 533**

119. ————— *Evidence to rebut presumption of uniformity of rent.*—Held, in a suit for enhancement of rent, that jama-wasil-baki papers, when produced by the zemindar at the citation of the defendant himself, were not merely corroborative, but, under section 4, Act X of 1859, good and sufficient evidence as against the latter in rebutting the presumption under section 4, Act X of 1859. **SHIB PRASAD DOOBEE v. PROMOTHONATH GHOSE** . . . **10 W. R., 193**

120. ————— *Evidence Act, 1872, s. 34.*—Though not alone sufficient to charge any one with liability, documents admissible as evidence under Act I of 1872, section 34, were held to be sufficient to answer a claim set up to exemption from what would be the ordinary liability of a tenant,—*e. g.*, in a suit for enhancement of rent, to rebut a presumption arising from uniform payment for twenty years. **BELAFT KHAN v. RASH BEHAREE MOOKERJEE** [**22 W. R., 549**]

7. MAPS.

121. ————— *Map.—Evidence of title.—Evidence of possession.*—A map is not evidence of title, but only of possession, even though prepared by the gomastahs of both plaintiff and defendant. **GOV-MONKE v. HUREN KISHORE ROY** . **10 W. R., 388**

122. ————— *Map prepared for another purpose.*—Maps drawn for one purpose are not admissible as evidence in a suit for a totally different purpose. **KERE v. NUZZAR MAHOMED** [**2 W. R., P. C., 29**]

123. ————— *Map of nazir not called as witness.*—The report and map of a nazir who is not examined in a case are no evidence whatever. **GOBIND MUHTOO v. GOOPKE BHUGGUTT** [**16 W. R., 4**]

124. ————— *Map made by Ameen.—Suit to establish title.*—Held in a suit to establish title to land, where an Ameen's map which professed to show the daghs of a hustabood chittah was not

EVIDENCE—CIVIL CASES—continued.**7. MAPS—continued.****Map made by Ameen—continued.**

questioned by either party, it was not open to the Court to question its correctness, and to try whether it was possible to construct any map from the chittah. **BRIJANATH CHOWDREY v. LALL MEEAH MUNNEPOORRE** . . . 14 W. R., 391

125. ——— Collectorate map.—*Map not made by authority of Government.*—Where a Civil Ameen makes a local enquiry as to the situation of certain disputed lands with reference to the Collectorate map put in by the plaintiffs, and not objected to by the defendants who are present and recognise the boundary indicated as that whereon the enquiry is to be based, the map must be taken to be one which the parties recognise as correct and trustworthy, irrespective of the question whether it was prepared with the authority of Government. **GUNGA NARAIN CHOWDREY v. RADHIKA MOHUN ROY. RADHIKA MOHUN ROY v. GUNGA NARAIN CHOWDREY** . . . 21 W. R., 115

126. ——— Schedule map, Copy of.—*Measurement and demarcation of lands.*—Where a copy (the original having been filed in another suit) of a schedule map showing the different plots of land belonging to each of several shareholders and defining their boundaries, had, as appeared from various petitions on the record, been filed on more than one previous occasion, and relied upon by the parties to this suit, including the plaintiffs when it suited their purpose to do so, and where it appeared moreover that plaintiffs had on many previous occasions admitted the correctness of the map, and that their shares had been demarcated therein,—*Held* that the plaintiffs could not now sue for a fresh measurement and demarcation, and that the Judge, in not considering the copy of the map as binding on the plaintiffs, was wrong in his estimate of the weight to be given to it. **ROMANATH ROY CHOWDREY v. KALLY PROSHAD ROY CHOWDREY** . . . 18 W. R., 343

127. ——— Survey and thak maps.—A survey map as well as a thak map is admissible as evidence. **JUGDISH CHUNDER BISWAS v. CHOWDREY ZUHOORUL HUQ** . . . 24 W. R., 317

128. ——— Maps, Certified copies of.—Certified copies of maps are admissible in evidence. **GOPEENATH SINGH v. ANUND MOYEE DEBIA** [8 W. R., 167]

129. ——— Survey map.—*Ameen's report.*—A survey map sought to be set aside may be used for the purpose of testing the correctness of an Ameen's report. **PUDO MONNE DOSSEE v. BISSHUR DUTT CHOWDREY** . . . 5 W. R., 34

130. ——— Evidence of area and boundary.—A survey map may be resorted to for assistance in considering the evidence of a thak map as to area and boundary. **BURN v. ACHUMBIT LALL** [20 W. R., 14]

131. ——— But it is a piece of evidence only like other evidence in a case, and of

EVIDENCE—CIVIL CASES—continued.**7. MAPS—continued.****Survey map—continued.**

no effect in determining the onus of proof. **NARAIN SINGH ROY v. NURENDRO NARAIN ROY. NURENDRO NARAIN ROY v. NARAIN SINGH ROY** [22 W. R., 296]

132. ——— Memo. on survey map.—*Evidence of title and possession.*—Pencil memoranda on a Government survey map held to be admissible as evidence. Survey maps prepared under the authority of Government are evidence of possession, and, therefore, also of title. **SHASHEE MOOKHEE DOSSEE v. BISSHESSTREE DEBEE** . . . 10 W. R., 343

133. ——— Evidence Act, 1855, s. 13.—*Evidence of rights.*—Under section 13, Act II of 1855, Government survey maps are evidence, not only with regard to the physical features of the country depicted, but also with regard to the other circumstances which the officers deputed to make the maps are specially commissioned to note down. Further than this they are not evidence as to rights to ownership. **KOOMODINI DEBIA v. POORNOO CHUNDER MOOKERJEE** . . . 10 W. R., 301

134. ——— Suit for right of fishery.—*Evidence of title.*—Survey maps are not evidence of title in a dispute regarding a right of fishery. **BROMA v. LALLITNARAIN DAO** [W. R., 1864, 120]

135. ——— Suit for possession.—*Evidence of title.*—A survey map is not sufficient, in the absence of other satisfactory proof of title, or of long antecedent possession, to establish a plaintiff's right to the land, and to disturb the defendant's present possession. **COLLECTOR OF RAJSHAHEE v. DOORGA SOONDREY DEBIA** . . . 2 W. R., 210

136. ——— Proof of title.—A survey map and proceedings may in certain cases form evidence sufficient to prove title; and it is beyond the province of the High Court in special appeal to lay down any rule as to what weight is to be attached to that evidence. **OOMMUT FATIMA v. BHUJO GOPAL DASS** . . . 13 W. R., 50

137. ——— Evidence of title.—*Boundary dispute.*—Maps made on the occasion of a boundary dispute are evidence of title in a subsequent suit where the question of boundaries arises. **RADHA CHURN GANGOOLY v. ANUND SEIN** [15 W. R., 444]

138. ——— Evidence of title.—*Evidence of possession.*—Survey officers having no jurisdiction to enquire into questions of title, a survey map is not direct evidence of title in the same way that a decree in a disputed cause is evidence of title, but it is direct evidence of possession at the time of the survey being made. **NOBO COOMAR DOSS v. GOBIND CHUNDER ROY** . . . 9 C. L. R., 305

139. ——— Boundary dispute.—In a case involving a boundary dispute, a survey map, if not conclusive evidence, is evidence of an

EVIDENCE—CIVIL CASES—continued.**7. MAPS—continued.****Survey map—continued.**

important character, which ought to be looked into and considered. **GUDDADHUR BANERJEE v. TARA CHUND BANERJEE** . . . 15 W. R., 3

140. ————— Boundary dispute.—Conduct of parties.—In a boundary dispute, where the question relates to the situation of the pillars which formed the line, and the sketch map left by the officer who laid down the pillars affords room for ambiguity as to the direction of the line, it is of importance to see what has been the conduct of the parties since the line of pillars was decreed to be the boundary. If there has been a Government survey, the survey map must be taken as evidence; and if one of the parties has made a settlement according to the survey boundary, the fact must be taken into account unless explained away. **RADHA CHOWDHRAIN v. GIRENDHAREE SAHOO** . . . 20 W. R., 243

141. ————— Boundary dispute.—Where a plaintiff claimed to be holding certain lands under two puttees, and the defendants contended that plaintiff's possession extended only to the cultivated and not to the uncultivated plots of the said lands, but the survey map showed that the land in suit fell within plaintiff's area, and that it was distinguishable from other lands falling within the same boundaries which had been specially reserved by the talookdar,—*Held* that, though the testimony of a survey map was not conclusive, it should not be disregarded unless there was clear and direct evidence to the contrary. **PROSONNO CHUNDER ROY v. LAND MORTGAGE BANK OF INDIA** [25 W. R., 453]

142. ————— Thakbust map.—Record of tenures.—Evidence of extent of interest of shikmee talookdar.—A thakbust map is not intended to represent, and is in no sense a record of, tenures subordinate to Government revenue-paying estates, and is of no value as evidence in a suit in which the extent of the interest of a shikmee talookdar is matter for determination. **MOHIMA CHUNDER ROY CHOWDERY v. WISE** . . . 25 W. R., 277

143. ————— Admissibility is evidence in future suits.—In a suit for confirmation of possession by demarcation of boundaries which the plaintiff alleged had been wrongly described in the thakbust map, a decree was refused to him. *Quere.*—Whether or not the map would be admissible in evidence in a future proceeding upon a question of boundary to which the plaintiff may be a party. **MOTHE LAL v. BROOF SINGH** [2 Ind. Jur., N. S., 245; 8 W. R., 64]

144. ————— Evidence of possession.—Possession.—Value of thak maps as evidence of possession discussed. **JOYTARA DASSEN v. MAHOMED MOBARUCK** [I. L. R., 8 Calc., 975; 11 C. L. R., 399]

145. ————— Suit for possession.—Ejectment.—In a suit for possession, the only evidence for the plaintiff was a thakbust map which

EVIDENCE—CIVIL CASES—continued.**7. MAPS—continued.****Thakbust map—continued.**

had been signed as correct by predecessors in title of both the plaintiff and defendant, and on which the lands in dispute were laid down as the lands of the plaintiff's predecessor. *Held* that the evidence was not sufficient to justify a decree for the plaintiff. **MOHESH CHUNDER SEN v. JUGGUT CHUNDER SEN** [I. L. R., 5 Calc., 212]

146. ————— Thakbust maps where they are evidence of possession are also some evidence of title, though not conclusive. **POGOSH v. MOKOOND CHUNDER SUMMA** . . . 25 W. R., 36

CHAROO v. ZOBEIDA KHATOON . . . 25 W. R., 54

8. RECITALS IN DOCUMENTS.

147. ————— Recital in deed.—Evidence against third persons.—A recital in a deed or other instrument is in some cases conclusive and in all cases evidence as against the parties who make it, and it is of more or less weight or more or less conclusive against them according to circumstances. It is a statement deliberately made by those parties, which, like any other statement, is always evidence against the persons who make it. But it is no more evidence as against third persons than any other statement would be. **BRAJESHWARS PESHKAR v. BUDHANUDDI**

[I. L. R., 6 Calc., 268; 7 C. L. R., 6]

See **FULLI BIBI v. BUSSIRUDDI MIDHA** [4 B. L. R., F. R., 54]
and **MANIKLAL BABOO v. RAMDAS MOZUMDAR** [1 B. L. R., A. C., 92]

148. ————— Evidence of legal necessity for alienation.—A recital in a deed that it is necessary to contract a debt binding on a minor, or a member of a joint family, is some evidence that the fact recited was present to the minds of the parties to the transaction, and the absence of any such recital will make it more difficult for the party on whom the burden of proof lies to establish the existence of a legal necessity. But such a recital is not evidence sufficient to establish the fact so recited. **SIKHEE CHUND v. DULPUTTY SINGH**

[I. L. R., 5 Calc., 363; 5 C. L. R., 374]

OBHOYCHURN DOSSE v. MHEE SAHEB ALI [5 W. R., 244]

ROOFMONJOORE DOSSEE v. RAMLALL SINGAR [1 W. R., 144]

149. ————— Evidence of legal necessity for alienation.—A recital in a deed of sale by a Hindu widow of her deceased husband's property setting forth that the alienation was necessary for the purpose of paying his debts, is not of itself evidence of such necessity. **RAJLAKHI DEBI v. GOPAL CHUNDBA CHOWDERY**

[3 B. L. R., F. C., 57; 12 W. R., P. C., 47
13 Moore's I. A., 209]

See **RAJARAM TEWARI v. LUCHMAN PRASAD** [4 B. L. R., A. C., 118; 12 W. R., 478]

EVIDENCE—CIVIL CASES—continued.**8. RECITALS IN DOCUMENTS—continued.****Recital in deed—continued.**

150. ————— *Recital in bond for money borrowed by Hindu widow.—Evidence of necessity.*—A recital in a bond for money borrowed by a Hindu widow to the effect that the bond was given for the performance of her husband's aradh is no evidence of the fact in a suit against the heirs of her husband, or in a suit to charge the estate. *SUNKER LALL v. JUDDOOBUN SUHAYE*
[9 W. R., 285]

151. ————— *Recital as to possession.*—The recital in a deed that a certain party was in possession held not sufficient to prove a case which depended on proof of that party's possession. *MAHOMED HAMDOOLLAH v. MODROO SODUN GHOSH* 11 W. R., 298

152. ————— *Evidence of intention.*—The recital of the terms of an old mortgage-deed of 1844 in the *wajib-ul-urz* prepared in 1862 held not to amount to a new contract to be evidenced by the terms of the *wajib-ul-urz*, but was only a record of existing rights, and therefore did not estop the mortgagor's claim for redemption under the old usury law. *RAO KURAM SINGH v. MEHTAB KOONWER* 3 Agra, 150

153. ————— *Evidence of separation.*—A recital in a deed of mortgage granted by one of two undivided brothers to a third party, that a division had taken place between the mortgagor and his brother, is no evidence of separation as against the latter or his representatives. *GOPAL v. NARAYAN BIN TUKAJI* 1 Bom., 31

154. ————— *Estate of inheritance.—Admission by conduct of parties.*—The deed of conveyance of land in Calcutta recited that the vendor was "seized of, or otherwise well entitled to, the property intended to be sold, for an estate of inheritance in fee-simple;" and it purported to convey such an estate. In a suit for dower by the vendor's widow against the heirs of the purchaser, — *Held* that although, as between the plaintiff and the defendants, there was no estoppel which could prevent the defendants from proving that the estate sold was other than an estate in fee-simple, yet, as the purchaser brought the property as and for an estate of inheritance and paid for it as such, the recital was *prima facie* evidence against the purchaser and persons claiming through him that the estate conveyed was what it purported to be, it being an admission by conduct of parties which amounted to evidence against them. *SARKIS v. PROSOMOMYEE DOSSEN*
[I. L. R., 6 Cal., 794; 8 C. L. R., 78]

155. ————— *Statement of payment of consideration.*—According to the practice in India, the statement in a deed of compromise of the payment of consideration-money is not conclusive evidence of payment. *CROWDREY DABEY PRESHAD v. CHOWDREY DOWLAT SINGH*
[6 W. R., P. C., 55; 3 Moore's I. A., 347]

EVIDENCE—CIVIL CASES—continued.**8. RECITALS IN DOCUMENTS—continued.****Recital in deed—continued.**

LOLITA DOSSIA v. RUTTUN MOLLER BHUTTA-CHARJEE 10 W. R., 208

NEYNUM v. MAZUFFER WAHID . 11 W. R., 285

156. ————— *Recital in lease.—Evidence of existence of mooktearnamah.*—The recital in a lease granted by a husband of his wife's property, that he was empowered by mooktearnamah to manage her business generally, is not evidence against the wife that such a mooktearnamah existed. *BHUK-NARAIN SINGH v. NESOOT KOER*
[Marsh., 373; 2 Hay, 448]

157. ————— *Recital in will.—Evidence of power-of-attorney.*—A recital in a will of a power-of-attorney held to be not sufficient evidence of such power, there being no evidence of the existence of the power, or of any circumstance which would enable the Court to presume the existence of such power. *BOMANJEE MUNCHERJEE v. HOSSAIN ABDOOLLAH*
[5 W. R., P. C., 61; 1 Moore's I. A., 494]

158. ————— *Age of child.*—The incidental mention of a child's age in the recital of a will is no proof of the exact age of that child. *NILMONEE CHOWDREY v. ZUHEERUNISSA KHANUM*
[8 W. R., 371]

159. ————— *Statement in will of value of property.—Acceptance of share on partition.*—The statement in a will as to the value of the testator's property is no evidence thereof. The acceptance by one brother of a certain sum of money in satisfaction of his own share in 1868, though it might be evidence of the value of the ancestral property in that year, affords no indication of the value of that property in 1876. *LAKSHMAN DADA NAIK v. RAM CHUNDRA DADA NAIK. RAM CHUNDRA DADA NAIK v. LAKSHMAN DADA NAIK*
[I. L. R., 1 Bom., 561]

9. RENT RECEIPTS.

160. ————— *Receipts for rent.—Mode of proving.*—*Dakhilas* should be attested or proved by some oral evidence in the same manner as all other documentary evidence; the tenant should be required to attest them himself as far as he can. It will then remain for the semindar to deny their genuineness, and he also should be examined regarding them. *RAJESUREE DEBIA v. SHIBNATH CHATTERJEE* 4 W. R., Act X, 42

161. ————— *Unattested dakhilas.*—Unattested *dakhilas*, without corroborative evidence, are not in law sufficient evidence of payment of rent. *ODIUT ZUMAN v. MOHIOODDEEN AHMED, alias MOGUL JAN* 9 W. R., 241

LUCHMERPUT SINGH v. JUNGULEE KULLYAN DOSS
[9 W. R., 147]

162. ————— *Unattested dakhilas.*—*Dakhilas* unattested, or attested only by the

EVIDENCE—CIVIL CASES—continued.**9. RENT RECEIPTS—continued.****Receipts for rent—continued.**

evidence of a manager and mooktear, were held to be no legal evidence of uniform payment of rent. **BRAZOONISSA v. BOOKOO CHOWDHRAIN**

[12 W. R., 267]

163. ——— *Proof of handwriting of.*—Receipts for rent purporting to have been given by the former owners of a jote are not admissible in evidence without proof as to the handwriting of the parties who gave them, or some satisfactory account of the custody from which they came. **WOMESH CHUNDA MOOKERJEE v. BAMA DOSSEE** **7 W. R., 15**

164. ——— *Proof of receipts.*—To prove receipts, it is not necessary to produce the writer of them. The ryot can prove his own receipts. **GANGA NARAYAN DAS v. SABODA MOHUN ROY CHOWDHRY**
[3 B. L. R., A. C., 230; 12 W. R., 30]

165. ——— *Proof of receipts.*—Dakhilas or rent-receipts filed by a ryot in a suit for arrears of rent or for enhancement must be proved, whether denied by the zemindar or not. **KIRTIBASH MYTTEE v. RAMDHUN KHORIA**
[B. L. R., Sup. Vol., 658]

S. C. KIRTIBASH MYTTEE v. RAMDHUN KHARAL
[2 Ind. Jur., N. S. 197; 7 W. R., 526]

166. ——— *Proof of receipts.*—Dakhilas relied upon by a defendant in a suit for arrears of rent at enhanced rates, to obtain the benefit of the presumption arising under section 4, Act X of 1859, must be proved even if not positively denied. **RAMJAPOO GANGOOLY v. LUCKHEE NARAIN MUNDUL** **8 W. R., 468**

167. ——— *Proof of uniform payment.*—In a suit for enhancement of rent, where the defendant filed receipts with a written statement duly verified as proving uniform payment of rent, but was not examined as to the genuineness of the receipts filed,—*Held* (by LOCH, J.) that the receipts were not proved; (by GLOVER, J.) that there was legal evidence of uniform payment; and as the lower Court believed it, however weak, its decision could not be interfered with. **LUCHMEEPUT SINGH DOOGUR v. WOOMANATH MUNDUL** . **10 W. R., 490**

168. ——— *Proof of dakhilas.*—Where a party filing dakhilas deposed that the amounts of rent he had paid were, according to the sums, entered in the dakhilas, such statement was held not to prove the dakhilas, being merely a deposition to the fact of a certain payment of rent, and not to the authenticity of the documents filed. **KOYLASH NATH HALDAR v. OOMANATH ROY CHOWDHRY**
[11 W. R., 170]

169. ——— *Proof of payment of rent or debt.*—A party is perfectly competent to prove the payment of a debt or rent by the production of the receipt and proof that it is the document which he received on paying the money. He

EVIDENCE—CIVIL CASES—continued.**9. RENT RECEIPTS—continued.****Receipts for rent—continued.**

is not bound to summon the parties who gave the receipts to prove their signatures, nor is his own evidence secondary evidence. **RAJ MAHOMED v. BANOO RASMAH** **12 W. R., 34**

170. ——— *Undisputed dakhilas.*—A Civil Court has every right to accept dakhilas tendered by a party as undisputed documents, where the opposite party says that he is not prepared to deny their genuineness. **INDRO BHOSUN DEB v. GOLUCK CHUNDER CHUCKERBUTTY**
[12 W. R., 350]

171. ——— *Dakhilas, Proof of.*—The party producing dakhilas is bound to give some evidence of their having been signed by the person by whom they purport to have been granted, although the opposite party does not deny the signature. **BHABUT ROY v. GUNGA NARAIN MOHAPUTTER** **14 W. R., 211**

172. ——— *Dakhilas, Proof of.*—The evidence of a tenant deposing to the genuineness of dakhilas produced by him, if not rebutted, is legally sufficient to prove them. **MADHUB CHUNDER CHOWDHRY v. PROMOTHONATH ROY**
[20 W. R., 264]

173. ——— *Acknowledgment of receipt of rent.—Presumption.*—An acknowledgment of the plaintiff in a former case of having realised a certain sum of money on account of rent paid for three years may afford some presumption that the older items in the account were satisfied, and, if that presumption could not be rebutted, might be an answer to an action on the older demand. **ENAYEF HOSSEIN v. DEEDAR BUX**
[W. R., 1864, Act X, 97]

174. ——— *Receipts by agent of landlord.*—Receipts signed by the landlord's agent, if shown to be authentic, are *prima facie* evidence of payment of rent, but not conclusive evidence. **AMBER BURESH v. YUSOOF ALI** . . . **22 W. R., 489**

175. ——— *Evidence of rate of rent.—Rate admitted in other cases.*—In suits for arrears of rent, where the account books put in by the plaintiff to establish the rates claimed by him were held by the Courts below to be unreliable, the lower Appellate Court was considered to have been justified in accepting (according to its own knowledge of them) rates which were admitted and had been awarded in other cases. **BUDHUA ORAWAN MAHTON v. JUGHESUR DOYAL SINGH** **24 W. R., 4**

10. REPORTS OF AMEENS AND OTHER OFFICERS.

176. ——— *Report of Ameen.—Report on local enquiry.*—Of the value of a local enquiry report made by a competent official as evidence, see **SARUT SUNDARI DABI v. PROSONNO COOMAR TAGORE**
[6 B. L. R., 677; 15 W. R., P. C., 20]
13 Moore's I. A., 607

EVIDENCE—CIVIL CASES—continued.**10. REPORTS OF AMEENS AND OTHER OFFICERS—continued.****Report of Ameen—continued.**

KALEE DOSS ACHARJEE v. KHETTRO PAL SINGH ROY 17 W. R., 472

CHUNDER COOMAR DUTT v. JOY CHUNDER DUTT MOJOMDAR 19 W. R., 213

177. ———— *Reports on local investigations.*—Unless there be very good grounds for dissenting and differing from reports made upon local investigations, the Courts even in India, and *a fortiori* the Privy Council in England, in dealing with boundary questions ought to give great weight to and be guided by them. **RAM GOPAL ROY v. GORDON STUART & Co.**

[14 Moore's L. A., 453: 17 W. R., 285

PROTAP CHUNDER BURROOAH v. SUBNOMOYEE [19 W. R., 361

178. ———— *Civil Procedure Code, s. 180.*—Where local enquiry is ordered by a lower Court, and evidence is taken by an Ameen and a report made, the return made by the Ameen becomes legal evidence under section 180, Act VIII of 1859, which the Appellate Court is not justified in refusing to consider. **RAJNATH PANDAH v. DOORGA LALL**

[12 W. R., 136

SHEO DOYAL SINGH v. HODGKINSON

[24 W. R., 342

179. ———— *Evidence on special points.*—Where a Court Ameen is appointed a Commissioner under the Civil Procedure Code, his report is only evidence on the point to which the commission refers; any report he chooses to make on any other point is no legal evidence in the case. **ABDOOL ALI v. MULLICK SUDDERODEEN AHMED**

[14 W. R., 493

See **DOORGA CHURN SUREMAH CHOWDERY v. NEEM CHAND SUREMAH CHOWDERY**

[24 W. R., 208

180. ———— *Local investigation not objected to.*—Where an order for a local investigation under section 180, Code of Civil Procedure, is not objected to by the opposite party at the time it is made, the Court is justified in viewing as evidence the report of the Commissioner, and the depositions taken by him, being a part of the record. **RAMBUKHA ROY v. GOBIND DASS BYRAGEN** 15 W. R., 291

181. ———— *Act X of 1859, s. 73.*—The report of an Ameen under section 73, Act X of 1859, is receivable as evidence, and a decision can be legally based upon it. **SUJUN KOOR v. HETHOO** 1 N. W., 165: Ed. 1873, 244

182. ———— *Local investigation.*—The report of an Ameen upon a local investigation is sufficient evidence to support a decree, if it is believed by the Court, and considered sufficient without further evidence to corroborate it. **SHEETARAM MOOKERJEE v. RAMNARAIN MOOKERJEE**

[6 W. R., 51

EVIDENCE—CIVIL CASES—continued.**10. REPORTS OF AMEENS AND OTHER OFFICERS—continued.****Report of Ameen—continued.**

183. ———— An Ameen's report is evidence without any specific documents corroborating his finding. **ESHAN CHUNDER SEIN v. HUREE CHURN DEY** 2 W. R., 278

GOUREE NARAIN MOZOOMDAR v. MODHOSOODUN DUTT 2 W. R., Act X, 1

184. ———— *Report as to measurement.*—*Oral evidence.*—It is necessary that oral testimony should be taken in order to effect a measurement, or that an Ameen's report must have depositions attached to it to make it legal evidence. **CHUNDER MONER DOSS v. NILAMBUR MUSTOFFE**

[7 W. R., 43

185. ———— *Civil Procedure Code, 1859, s. 180.*—The report of a Civil Ameen and the depositions taken by him are admissible as evidence under section 180, Act VIII of 1859. **NUTHOO v. GHUNESSAM SINGH** 8 W. R., 267

ABDOOL GUNNEH v. BUTTOO SHEIKH

[22 W. R., 350

BHYRUB ROY v. NOBIN ROY 9 W. R., 601

186. ———— *Evidence taken under powers given him.*—A Civil Ameen's report and the depositions of the parties and witnesses examined by him, must be considered, even though the Court exercised its discretion unwisely and wrongly in giving him too extensive powers. **UMBICA CHURN DEY v. GOLUCK CHUNDER CHUCKERBUTTY**

[9 W. R., 596

187. ———— *Depositions without report.*—An Ameen had been deputed to make a local investigation, and had examined certain witnesses, but could not examine the rest, or complete his investigation and draw up his report, owing to the plaintiff not paying the necessary expenses. *Held* that the depositions of the witnesses without the Ameen's report were not admissible in evidence. **DEBNARAYAN DEB v. KALI DAS MITTER**

[6 B. L. R., Ap. 70: 14 W. R., 367

Affirming on appeal **KALEE DASS MITTER v. DEB NARAIN DEB** 13 W. R., 412

188. ———— *Civil Procedure Code, 1859, s. 180.*—Where an Ameen who had been deputed to make a local enquiry took the depositions on oath of several witnesses on both sides, and afterwards for further satisfaction recorded the statements of certain persons whose religious prejudices stood in the way of their giving evidence on oath, *Held* that his reports and the original depositions on oath were receivable in evidence under section 180 of the Code of Civil Procedure. **DOLE GOBIND SINGH v. CHAMOO SINGH** 10 W. R., 312

189. ———— *Evidence taken by Ameen.*—The report of an Ameen and the evidence recorded on a local enquiry are evidence in the suit, and there is no legal objection to the parties to

EVIDENCE—CIVIL CASES—continued.**10. REPORTS OF AMEENS AND OTHER OFFICERS—continued.****Report of Ameen—continued.**

the suit agreeing that the evidence should be taken before the Ameen, and that the matters in dispute should be referred to him for enquiry. **SARAT CHANDRA ROY v. COLLECTOR OF CHITTAGONG**

[2 B. L. R., Ap., 3

190. ————— Report and map made by Ameen.—A lower Appellate Court was held to have erred in law in taking an Ameen's report and map as its sole guide, and making them the sole basis and foundation of its decision to the total disregard of the other evidence on the record. **BUSTES SAHOO v. JEONARAIN SINGH** . 24 W. R., 336

191. ————— Ameen giving credit to local rumour.—In a suit for enhancement of rent, when the defendant objected in his grounds of appeal that the rates of the village in which his land was situated were lower than the pergunnah rates,—*Held* that the Judge had no right to take the report of an Ameen who did not give credit to defendant's witnesses on account of something he heard in the neighbourhood, but that he ought himself to have examined those witnesses. **TWEEDIE v. POORNO CHUNDER GANGOOLEE** . 12 W. R., 138

192. ————— Ameen's report and map.—When an Ameen's map is received in evidence by consent, and admitted by both parties to be topographically correct, the Court is entitled to look at the Ameen's report as explanatory of the map. **MAHOMED ANWAR CHOWDERY v. RAJ CHUNDER GHOSH** . 17 W. R., 522

193. ————— Question of possession.—The report of an Ameen, however valuable in clearing up difficulties as to the identity and position of lands, is, generally speaking, of no value in determining questions connected with the possession of lands in dispute in past times. **PRANNATH CHOWDERY v. MIRNOMOYEE CHOWDERY** [W. R., F. R., 39

194. ————— The Judge is bound, under section 180 of Act VIII of 1859, to take notice of and pronounce an opinion upon evidence taken by an Ameen as to possession. **JANNOBEE CHOWDERAIN v. COLLECTOR OF MYMENSING** [8 W. R., 287

195. ————— Proof of possession.—An Ameen's report held not sufficient of itself to prove possession. **AMHERNOODDEEN SHAHA v. ASGUR ALI** . 8 W. R., 464

196. ————— Suit for rent.—*Evidence of measurement.*—In a suit for rent for 1283, 1284, 1285, and 1286 upon a jungleburi lease which provided that the area of jungle lands brought under cultivation should be ascertained by measurement, the only evidence of measurement was a report of an Ameen made in a previous suit in 1879, the accuracy of which report was not proved in the present suit.

EVIDENCE—CIVIL CASES—continued.**10. REPORTS OF AMEENS AND OTHER OFFICERS—continued.****Report of Ameen—continued.**

Held that the report itself was not admissible in evidence. **DENOBUNDHU GHOSH v. NISTARINI DASSEE** [12 C. L. R., 50

197. ————— Civil Procedure Code, 1859, s. 180.—The report of an Ameen in a proceeding to make a partition, which is a judicial proceeding under section 180, Act VIII of 1859, must be treated in the same way as the report of an Ameen in an ordinary suit. The report and depositions are to be taken as evidence in the suit, and to form part of the record. The Court is not bound by the report, but ought to enquire further into the matter if there is any necessity for so doing, and to examine witnesses *bond fide* tendered for examination. **AZIM SARUNG v. ALIMOODDEEN** . 17 W. R., 270

198. ————— Without jurisdiction.—The proceeding of a Court Ameen in a subdivision where he has no jurisdiction cannot be a legal proceeding or legal evidence. **NIIDHOO SREOAR v. PHILLIPPE** . 10 W. R., 153

199. ————— Reports of officers appointed under Bengal Regulation I of 1814.—Reports of officers appointed under Regulation I of 1814, if received as evidence in the first Court, and not objected to in the Appellate Court, may, under certain circumstances, be accepted *quantum valeat*. **BHIRKOO SAHOO v. THIR ALI KHAN** . 9 W. R., 96

200. ————— Reports made by Collectors acting under Madras Regulation VII of 1817.—*Evidence of private rights.*—Reports made by Collectors acting under Madras Regulation VII of 1817 are not to be regarded as having judicial authority when they express opinions on the private rights of parties; but being the reports of public officers made in the course of duty and under statutable authority, they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also in so far as they are relevant to explain the conduct and acts of the parties in relation to them, and the proceedings of the Government founded on them. **MUTTU RAMALINGA SETUPATI v. PERIANAYAGAUM PILLAI**. **ZEMINDAR OF RAMNAD v. PERIANAYAGAUM PILLAI** . L. R., 1 L. A., 209

201. ————— Report of Special Commissioner.—The report of a Special Commissioner was held to be inadmissible as evidence, as it did not come within any provision of the Evidence Act which would make it admissible. **LEELANUND SINGH v. LAKHPUTTEE THAKOORANI** . 22 W. R., 231

202. ————— Report of mouzadar.—*Report of officer not competent under s. 180, Civil Procedure Code, 1859.*—The report of a mouzadar, not being that of a person competent within the meaning of section 180, Act VIII, 1859, to report upon matters in process of judicial decision, may be disregarded by a Civil Court. **RAJARAM KALITA v. ROOPA KAGATHE KALITA** . 13 W. R., 113

EVIDENCE—CIVIL CASES—continued.**10. REPORTS OF AMEENS AND OTHER OFFICERS—continued.**

208. ———— *Report of Munsiff on local investigation.*—A Munsiff's report of a local investigation, when not shown to be substantially erroneous in its data or reasoning, should convey the greatest weight as evidence of the facts it sets forth. *WIR v. AMERBOONISSA KHATOON* . 3 W. R., 219

204. ———— *Judgment on facts observed by Judge but not proved.*—In a suit respecting boundaries, the Munsiff, before settling the issues in the case, visited the locality, and in his judgment relied upon certain facts which had come under his observation during his visit. These facts were not proved by any evidence, and the Munsiff did not make any report as to them. The District Judge reversed the Munsiff's decision on the oral evidence given in the case, holding that he could not take notice of the facts observed by the Munsiff himself, and on which he had based his judgment. *Held* that, though the result of the enquiry instituted by the Munsiff was not evidence according to the definition in the Evidence Act, it was a matter before the Court which might have been taken into consideration. *Held*, also, that the Munsiff should have put the result of his investigation upon paper. *JOY COOMAR v. BUNDHOO LALL*

[I. L. R., 9 Calo., 363 : 12 C. L. R., 490]

205. ———— *Report of nazir.*—*Civil Procedure Code, 1859, s. 180.*—*Ameen.*—*Act XII of 1856.*—The report of a nazir deputed to enquire into the condition of property in dispute under section 180, Act VIII of 1859, is admissible in evidence, although he was not an Ameen appointed under Act XII of 1856. *BUZAL ROHIM v. LUTAFUT HOSSAIN*. *KHODEMOONISSA BIBEN v. LUTAFUT HOSSAIN*

[W. R., 1864, 171]

206. ———— *Report of sheristadar.*—*Civil Procedure Code, 1859, s. 180.*—The report of a sheristadar is not, under section 180 of the Code of Civil Procedure, and in view of the fact that there was a Commissioner attached to the Court, legal evidence. *BYJNATH SINGH v. INDURJEET KOOR*

[8 W. R., 331]

207. ———— *Local investigation.*—The report of a sheristadar, after local investigation, cannot be legal evidence, unless it is shown that no Civil Court Ameen was available for the duty in the district. *GOLUCK CHUNDER KOOL v. DOOKHEE RAM* 12 W. R., 209

11. MISCELLANEOUS DOCUMENTS.

208. ———— *Acknowledgment.*—*Admission of amount of debt.*—An unsigned paper, by which a person who agreed to the contents of that paper admitted that he owed the amount there stated, received in evidence as an acknowledgment in a suit for recovery of the debt admitted by such acknowledgment. *EDULJEE FRAMJEE v. ABDULLA HAJEE CHERAK*

[1 Moore's L. A., 461 : 5 W. R., P. C., 58]

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.**

209. ———— *Bundobust papers.*—*Evidence of commencement of tenure and assessment of rent.*—Bundobust papers are nothing more than a contemporaneous record of tenures as they existed in the years specified, and do not in any way import the commencement of a tenure or a fixing of the rent at that particular time. *DHUN SINGH ROY v. CHUNDER KANT MOOKERJEE* . 4 W. R., Act X, 43

210. ———— *Canooongo papers.*—*Proceedings of settlement officers.*—*Evidence of pergunnah rates and measurement.*—Canooongo papers and proceedings of settlement officers are good evidence in questions of pergunnah rates, standards of measurement, and the like. *NUND DUTPAT v. TARA CHAND PRITHEEBAREE* . 2 W. R., Act X, 13

211. ———— *Evidence of rate of rent.*—How far and when canooongo papers are admissible as evidence for the zemindar as to the rate of rent paid by the ryot. *KHEBOMONEE DOSSEE v. BEEJOY GOBIND BURAL* . . 7 W. R., 533

212. ———— *Evidence of proper custody.*—Old canooongo papers cannot, in the absence of evidence to show what they are and that they came out of proper custody, be received in evidence; before such papers can be admitted as evidence against a party it must be shown how they can be used against him. *DWARKA NATH CHUCKERBUTTY v. TARA SOONDERY BURMON*

[8 W. R., 517]

213. ———— *Collection papers.*—*Papers to refresh memory.*—Collection papers are no evidence *per se*; they can only be used when they are produced by a person who has collected rent in accordance with them, and who merely uses them for the purpose of refreshing his memory. *MAHOMED MAHMOOD v. SAFAR ALI* . I. L. R., 11 Calo., 407

214. ———— *Criminal Court, Proceedings in.*—*Suit for damages for assault.*—*Previous conviction of defendant.*—In a suit for damages for an assault, the previous conviction of the defendant in a Criminal Court is no evidence of the assault. The factum of the assault must be tried in the Civil Court. *ALI BUKSH v. SAMIRUDDIN*

[2 B. L. R., A. C., 31 : 12 W. R., 477]

215. ———— *Plea of guilty.*—*Verdict of conviction.*—A plea of guilty in the Criminal Court may, but a verdict of conviction cannot, be considered in evidence in a civil case. *SHUMBOO CHUNDER CHOWDEY v. MODHOO KYBUT* 10 W. R., 56

216. ———— *Finding on facts.*—A proceeding of a Criminal Court is not admissible as evidence; a Civil Court is bound to find the facts for itself. *KHEAMTOOLLAH v. GHOLAM HOSSAIN* 9 W. R., 77

217. ———— *Judgment in criminal case.*—In a suit for arrears of rent from a putneedar, where plaintiff stated that he had, on an allegation made by defendant that a dacoity had

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Criminal Court, Proceedings in—continued.**

taken place in her house, allowed her an abatement; but finding from a judgment of the High Court that no such dacoity had taken place, he claimed full rents.—*Held* that the High Court's judgment was admissible, with a view to ascertain the truth of plaintiff's case. **ENAYET HOSSEIN v. KHOORUN-KISSA** **9 W. R., 246**

218. ——— *Title to stolen property.*—*Verdict of Criminal Court.*—The verdict of a Criminal Court with respect to the alleged theft of notes is no evidence of the ownership of such notes. **PANNA LALL v. GOPIRAM BUZURIAH** [3] **B. L. R., Ap., 2**

219. ——— *Proceedings under Act IV of 1840.*—*Held* (by MARKBY, J.), that a Judge was justified in rejecting as evidence a proceeding under Act IV of 1840. **ABDOOL ALI v. MULICK SUDDERODDEEN AHMED** [14 **W. R., 493**

220. ——— *Documents filed in case under Criminal Procedure Code, s. 318.*—Documents filed in a case under section 318, Code of Criminal Procedure, cannot be accepted as evidence in a suit before a Deputy Collector. **CHOOBUN SINGH v. DHOORUB SINGH** **11 W. R., 171**

221. ——— *Deceased person, Statement by.*—*Statement against his interest or proprietary right.*—The principle upon which the admissibility of a written statement made by a deceased person is determined is, whether it has been made under such circumstances as make it reasonable to suppose that it was done *bona fide*, and that the allegations it contains are true; and if, as a whole, it is against the interest or the proprietary right of its author, such parts as are in his favour cannot be rejected. **LEKHLANUND SINGH v. LAKHPUTTEE THAKOORANI** **22 W. R., 231**

222. ——— *Depositions.*—*Living witnesses.*—Depositions of witnesses in a former suit are not admissible in evidence when those witnesses are living, and their oral evidence is procurable. **HARISH CHUNDER CHUCKERBUTTY v. TARA CHAND SHAHA** **2 B. L. R., Ap., 4**
NIRPAL SINGH v. GOYADAT **3 Agra, 311**

223. ——— *Depositions irregularly taken on commission.*—Where a Commissioner took the evidence of witnesses when the last return day of the commission had expired, it was held that the depositions of the witnesses were not admissible in evidence in the cause. **GREGORY v. DOOLY CHAND** **14 W. R., O. C., 17**

224. ——— *Document receipt-book.*—*Book kept by attorney.*—*Receipt given by defendant for documents of title.*—*Admission.*—A witness (an attorney) cannot refer to his documents receipt-book, in order to enable him to say whether a document of a particular character and date was in his

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Document receipt-book—continued.**

possession on a particular day. A receipt by the defendant for documents relating to his title in a suit is receivable in evidence as being in the nature of an admission signed by the defendant. **MADHAB CHUNDRA DUTT v. RAJKISO SETH** **Cor., 143**

225. ——— *Enhancement of rent.*—*Evidence of ground of.*—*Increased value of produce.*—*Evidence to prove.*—In a suit for enhancement of rent, the plaintiff, among other grounds, contended that the value of the produce of the land had increased, and called witnesses belonging to the cultivating class, who stated from memory the prices which had prevailed in the locality for a number of years. The District Judge considered this evidence to be no safe guide to the value of produce, which he held could only be proved by traders and merchants with books of accounts, by which their memory could be refreshed and tested. *Held* that the evidence adduced was relevant, and entitled to consideration. **HURO PERSAD ROY v. WOMATARA DEBEE**

[1 **L. R., 7 Calo., 263; 8 C. L. R., 449**

226. ——— *Entries* by officer of Court.—*Evidence Act (II of 1855), s. 4.*—*Entries by nazir.*—*Issue of warrant.*—Under section 4, Act II of 1855, a Court is entitled to refer to entries made by its own officer, the nazir, and find thereon that a warrant had been issued in accordance with an application admitted to have been made. **NILKUNT CHUCKERBUTTY v. SHEO NARAIN KOONWAR** [8 **W. R., 276**

227. ——— *Government Gazette.*—*Conditions of sale.*—*Proof of.*—*Suit to cancel patni tenure.*—The Government Gazette containing the advertisement of sale and a printed paper purporting to be the conditions of sale alluded to in the Gazette, and issued from the Master's office in the name of the Master, were admitted in evidence to prove the actual conditions of the deed of sale. **JOTENDRO MOHUN TAGORE v. BROJOSOODREY** [7 **W. R., 1864, 50**

228. ——— *Handwriting.*—*Forgery.*—Where evidence could have been adduced, and was not, as to a handwriting being forged, and the Judge by comparison with other handwriting held it to be a forgery, such finding was disapproved of. **KURALI PRASAD MISSE v. ANANTARAM HAJRA** [8 **B. L. R., 490; 16 W. R., P. C., 16**

229. ——— *Issumnuvissi papers.*—*Enhancement of rent.*—*Possession.*—In a suit by a purchaser of a patni at a sale for arrears of rent to enhance the rent of the ghatwal under Regulation VIII of 1819.—*Held* that issumnuvissi papers for 1811-1813, stating that the amount held by the ghatwal was 100 bigas, did not entitle the plaintiff to enhance the rent of the surplus over that 100 bigas in the face of satisfactory oral evidence of long uninterrupted possession. **FARQUEHARSON v. DWARKANATH SINGH** **8 B. L. R., 504**

S. C. FARQUEHARSON v. GOVERNMENT OF BENGAL
14 Moore's I. A., 259; 16 W. R., P. C., 29

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Issumnuvissi papers—continued.****Affirming ERSKINE v. GOVERNMENT**

[8 W. R., 233

and GOVERNMENT v. FERGUSON . 9 W. R., 158

230. ————— Kabuliats.—*Evidence against third parties.*—In a suit for declaration of title and confirmation of possession, where plaintiff claimed as having the right, title, and interest of the former zemindar in execution of a decree against him, urging that the lands were part of the khas lands of the estate, and defendants claimed the lands as part of their manraji tenure obtained from the same zemindar.—*Held* that attested kabuliats filed by the plaintiff, though good evidence as between plaintiff and the tenants of the land, could not, in regard to a third party, be held as evidence in the absence of the tenants themselves, who should have been examined. **MOHIMA CHUNDER CHUCKERBUTTY v. POORNO CHUNDER BANERJEE** . . . 11 W. R., 165

231. ————— Letters.—*Letter from Judge as to irregularity in return to commission.*—A letter from a Judge cannot be given in evidence to show that a formal return, made by him on a commission to examine witnesses, was wrong. **LAND MORTGAGE BANK OF INDIA v. MUNSUR ALI** [1 C. L. R., 230

232. ————— Letters between members of a joint family and the karta of the family.—In a suit by a member of a joint Hindu family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree against B., a member of the family, for his separate debt, letters between B., the karta of the family, and E., relative to the purchase by the latter as his separate property of the estate in dispute, were admitted in evidence as against the defendant. **BODH SING DOODHOORIA v. GUNESH CHUNDER SEN** [12 B. L. R., P. C., 317; 19 W. R., 356

233. ————— Market rate.—*Ascertainment of market rate in suit on an agreement of indemnity.*—Where the Court has had the advantage of having in evidence before it a record of the market rate of any particular day made up by a broker of intelligence and experience, such a record should be received as evidence of the particular state of the market on that day. **NARAIN CHUNDER DHUW v. COHEN** . . . I. L. R., 10 Calc., 565

234. ————— Marriage, Registration of.—*Registration of Mahomedan marriages.*—*Restitution of conjugal rights.*—*Beng. Act I of 1876, s. 6, sch. A.*—*Copy of entry in register.*—*Evidence.*—A husband and wife, Mahomedans, registered their marriage under Bengal Act I of 1876, setting out in the form prescribed in schedule A to the Act, as "a special condition" that the wife under certain circumstances therein set out might divorce her husband. These circumstances occurred; and the wife divorced her husband. *Held*, in a suit by the husband for restitution of conjugal rights, that the

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Marriage, Registration of—continued.**

"special condition" was a matter which, under the provisions of the Act it was the duty of the Mahomedan Registrar to enter in the register, and therefore a copy of the entry in the register was legal evidence of the facts therein contained. **KHADEM ALI v. TAJMUNISSA** . . . I. L. R., 10 Calc., 607

235. ————— Mercantile custom.—*Usage of carriers.*—*Liability of carriers for damage to goods.*—The defendants, carriers between Hongkong and Bombay, by a condition annexed to their bill of lading, stipulated that they should not be responsible for damage to goods arising from insufficiency of packing. The plaintiff shipped certain goods in one of defendant's steamers in packages which, though in fact insufficient, were packages of the kind ordinarily used for the conveyance of such goods from Hongkong to Bombay. In an action brought to recover damages for injury to the packages.—*Held* that evidence of mercantile usage or custom would be admissible to show that the words insufficiency of package should not be taken in their ordinary sense, but as meaning insufficient according to a special custom of the China trade. **PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. v. MANICKJI NARAINJI PADSHA** . . . 4 Bom., O. C., 189

236. ————— Mutation proceedings.—*Evidence Act, s. 80.*—*Statement in mutation proceeding.*—"Documents."—In a suit for recovery of lands claimed partly in virtue of rights obtained under a kobala and partly in virtue of rights purchased at a sale in execution of a decree in which the lower Appellate Court refused to recognise a statement made before a Collector in a mutation proceeding as a "document" under the Evidence Act.—*Held* by the High Court that a statement made before a Collector in a mutation proceeding is a document entitled to be received as evidence under section 80 of the Evidence Act. **BUDEEN LALL v. BHOOSER KHAN** . . . 25 W. R., 134

237. ————— Notes of depositions.—*Evidence irregularly taken.*—Rough notes taken down by an Assistant Collector of what was said by witnesses whose depositions are not recorded are not evidence such as is required by law, and an opinion based on such evidence is without legal validity. **BALA THAKOOR v. MEGHBURN SINGH** [14 W. R., 269

238. ————— Partition papers.—*Evidence of rate of rent.*—Butwara papers are only evidence of the proportionate assessment of Government revenue payable by proprietors after partition, not evidence binding ryots as to what holdings are theirs, or what are their arrears, rates, or periods of occupancy. **DROBO MOYEE GOSMANEE v. DHURMO DOSS KOONDGOO** . . . 10 W. R., 197

239. ————— Butwara chittas.—*Suit to set aside summary award.*—A butwara between zemindars is not binding in any way on the ryots, and butwara chittas are no evidence in

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Partition papers—continued.**

a suit for possession of a jote and to set aside a summary award under Act XIV of 1859, section 15. **GOPAL CHUNDER SHAHA v. MADHUB CHUNDER SHAHA** **21 W. R., 29**

240. ——— Butwara papers.—*Lands comprised in estate.*—Private butwara papers are good evidence towards showing what lands were in fact comprised in the estate at the time of butwara. **DWARKANATH ROY CHOWDHRY v. HURONATH ROY CHOWDHRY** **W. R., 1864, 238**

241. ——— Petitions.—*Petitions stating fact of conveyance.*—*Suit for possession.*—In a suit to recover the possession of land, the petitions of alleged owners, through whom the plaintiff claimed title, presented to the Collector and to the Principal Sudder Ameen, which respectively stated the conveyance from the one to the other, and from the last supposed owner to the plaintiff, were tendered as evidence of the plaintiff's title, without production of the deeds, or even evidence that such alleged owners had ever been in possession of the property. *Held* that the petitions were not admissible in evidence. **CLARKE v. BINDABUN CHUNDER SIRCAR**

[**Marsh., 75:1 Hay, 187: W. R., F. B., 20**
1 Ind. Jur., O. S., 97

242. ——— Pleadings.—*Statements in verified written statement.*—Statements made in a verified written statement of a party are not admissible in evidence (**BAYLEY, J., dubitante**). **MOOKTA KESHEE DOSSEE v. KOYLASH CHUNDER MITTER** [**7 W. R., 493**

243. ——— Declaration in pleadings.—Declarations made in pleading, in suits instituted before the Code of Civil Procedure came into operation, were inadmissible as evidence of the facts stated therein. **NARAPPA BINAPPA HEGDI v. GAPPAYABIN KAPAYA**

[**2 Bom., 361: 2nd Ed., 341**

244. ——— Written statement.—A written statement is not legal evidence, although the same penal consequences may follow from it if false as from a false deposition. **ISJUTOOLAH KHAN v. RAM CHURN GANGGOOLY** **12 W. R., 39**

245. ——— Possession, Fact of.—*Admissibility of evidence.*—*Statement by witness.*—A statement by a witness that a party was in possession is in point of law admissible evidence of the fact that such party was in possession. **MANIRAM DEB v. DEBI CHURN DEB**

[**4 B. L., F. B., 97: 13 W. R., F. B., 42**

Contra, **ISHAN CHUNDER BEHARA v. RAMLOCHUN BEHARA** **9 W. R., 79**

246. ——— Registers.—*Registration of tenure.*—*Common registry.*—*Act XI of 1859, s. 39.*—The fact that a tenure is registered in the Common Registry under Act XI of 1859, section 39, is not of itself *prima facie* evidence that such a tenure exists.

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Registers—continued.**

LAKHYNARAIN CHUTTOPADHYA v. GORACHAND GOSWAMY . . . **I. L. R., 9 Calo., 116: 12 C. L. R., 89**

247. ——— Registers of chakeran lands.—*Public records.*—The registers of chakeran lands are public records supposed to contain a correct list of the chakeran lands in existence at the time of the decennial settlement. **COLLECTOR OF EAST BURDWAN v. IMDAD ALI** **W. R., 1864, 358**

248. ——— Proof of registration of document.—*Suit on bond.*—Before enforcing a duly registered bond, without a suit, proof of the signature or handwriting of the Registrar is not necessary. The bond, with the further agreement endorsed thereon when registered, becomes a record, and is of itself *prima facie* proof of registration, and this with reference to the further agreement, as well as to the instrument itself. **HOBHEBO SOBAIR v. HOSSEIN ALI** **5 W. R., S. C. C. Ref., 14**

249. ——— Rent-roll.—*Suit for arrears of rent.*—In a suit for arrears of rent the rent-roll is not to be accepted as conclusive evidence. **SUBFRAZ KHAN v. TARAWUR ALI** **2 Agra, 258**

250. ——— Road-cess papers.—*Evidence Act, s. 18.*—Under the Evidence Act, section 13, road-cess papers are evidence *quantum valent*. **DAITARI MOHANTI v. JUGO BUNDHOO MOHANTI**

[**23 W. R., 293**

251. ——— Road-cess return by shareholder.—*Beng. Act X of 1871, sch.*—A road-cess return made by a shareholder under the schedule of Bengal Act X of 1871 is not admissible as evidence against another shareholder. **NUSSREHUN v. GOUBI SUNKER SINGH** **23 W. R., 192**

252. ——— Settlement papers.—In a suit for arrears of rent it was held that settlement papers were only corroborative evidence and under the circumstances insufficient to prove the yearly rental. **BUNWARI LALL v. FORLONG** **9 W. R., 239**

253. ——— Entry by settlement officer.—*Evidence of facts recorded.*—An entry made by a settlement officer on the report of a co-sharer, and on the strength of the report of the putwari and canoongoe, is, as a record framed by a public officer, admissible as evidence of the facts recorded. **KINBAR DANDHA v. GOKURUN** **3 Agra, 316**

254. ——— Entries duly made in settlement proceedings.—Entries duly made in settlement proceedings with respect to matters therein properly recorded, are, as against cultivators, evidence of such matters, although such evidence may be rebutted by other more reliable proof, if it be procurable. **DABEN LAL v. GOOLZAR RAN**

[**2 N. W., 394**

255. ——— Papers on settlement proceedings by Deputy Collector.—*Evidence of acquiescence of Collector.*—Where a memorandum of

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Settlement papers—continued.**

an order made, or proposed to be made, by a Collector upon a reference by his subordinate, which was found on a paper taken from the middle of a settlement record, was produced in Court in that form without explanation, and used by the Judge as evidence of acquiescence,—*Held* that it was not susceptible of use in that way, nor could it bind the Collector. **RUSSEK LAL SHAHA CHOWDHRY v. PREM DHUN BURAL**
[24 W. R., 279]

256. ——— Signature.—Proof of signature.—In considering whether a signature is genuine or not, it should not be compared with a document not before the Court, or with one of which the authenticity is doubtful. **GURUMURTI NAYUDU v. PAPPA NAYUDU** 1 Mad., 164

257. ——— Small Cause Court, Proceedings in.—Suit on decrees of Small Cause Court.—*Certified copy of record.*—In suits on decrees of the Small Cause Court, Calcutta, a copy of the record duly certified by the clerk of the Court, if it appears from such copy that the original has been duly authenticated by the Judge, is sufficient to prove the decrees. **HARONABAYAN v. MANIK SINGH**
[7 B. L. R., Ap., 61]

258. ——— Record of proceedings of Small Cause Court.—Summons-book.—The summons-book of the Small Cause Court, Calcutta, is admissible in evidence, though not signed by the presiding Judge. **QUEEN v. NAKUR SIRCAR**
[6 B. L. R., 729]

259. ——— Authentication of record.—The record of proceedings in the Small Cause Court is not admissible in evidence unless authenticated by the signature of the presiding Judge. **QUEEN v. SHIB CHANDRA DOSS**
[6 B. L. R., 730, note]

260. ——— Survey and measurement papers.—Survey proceedings.—Evidence Act, 1855, s. 15—Survey proceedings if made without reference to litigation then pending are not only evidence but are to be presumed to be correct, and it is beyond the functions of the High Court in special appeal to lay down any rule as to corroboration of such documents. **RAM NARAIN DOSS v. MOHESH CHUNDER BANERJEE**
[19 W. R., 202]

261. ——— Unattested chittas.—Where a party putting in chittas called in a witness to attest them, but the witness did not do so, and the party did not apply to the Court to compel him to do so, the chittas were held to be no legal evidence, even though admitted by the Lower Court without objection from the opposite party. **LIJUTOLAH KHAN v. RAM CHURN GANGOOLY**
[12 W. R., 39]

262. ——— Government chittas.—Act III of 1851, s. 58.—Under section 58, Act III of 1851, Government chittas are admissible as evidence in cases in Chittagong. **MAHOMED FETDYE SIRDAR v. OZEROODEN** . . . 10 W. R., 340

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Survey and measurement papers—continued.**

263. ——— Chittas.—*Boundary disputes.*—Chittas are evidence of title in boundary disputes, if an account is given of them, and they are properly introduced and verified. **SUDUKHINA CHOWDRAIN v. RAJ MOHUN BOSE**
[11 W. R., 350]

264. ——— Chittas made on boundary disputes.—Chittas made on the occasion of a boundary dispute are evidence of title where the question of boundaries arises in another suit. **RADHA CHURN GANGOOLY v. ANUND SEIN**
[15 W. R., 444]

265. ——— Chittas in resumption proceedings.—Chittas and maps made in contemplation of resumption proceedings in the presence of both sides and signed by the parties are legal evidence. **SHAM CHAND GHOSH v. RAM KRISTO BEWRAH** 19 W. R., 309

266. ——— Copies of measurement papers and maps.—Certificated copies of survey measurement chittas and field books are admissible in evidence. **GOPRENATH SINGH v. ANUND MOYEE DEBIA** 8 W. R., 167

267. ——— Chittas.—Attestation of chittas.—Where chittas were produced by plaintiff as evidence of certain lands being mal, it was held that they were sufficiently attested by the deposition of the village gomastah, that they were the chittas of the village while he was gomastah, and that he had been present when, with their assistance, a partial measurement had been carried out in the village. **DABEE PRESHAD CHATTERJEE v. RAM COOMAR GHOSHAL** 10 W. R., 443

268. ——— Measurement papers.—Evidence of title.—Measurement papers of a zemindari made for the purpose of a partition are admissible as evidence as to title as showing what the zemindari consisted of, though the partition may not have been carried out. **ANUND CHUNDER ROY v. HURONATH ROY** 4 W. R., 26

269. ——— Measurement papers.—A lower Appellate Court was held to have been fully justified in rejecting measurement papers as inadmissible in law, where no proof was given to show in what circumstances, under what authority, and for what purpose they had been prepared. **JHAREE SAHOO v. BUNDHOO SAHOO** . . . 15 W. R., 218

270. ——— Measurement papers.—Measurement papers cannot be treated as inadmissible in evidence because set aside by the decisions of the lower Courts, if these decisions have been reversed by the High Court. **GOBIND MURTOO v. GOOPIN BRUGGUT** 16 W. R., 4

271. ——— Chittas made by revenue officers.—Chittas made by the revenue authorities in the course of measurement of a Government mehal stand precisely on the same footing as

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Survey and measurement papers—continued.**

chittas made by them in enquiries relating to revenue, and are equally admissible in evidence; the circumstance that the proceedings relate to a khas estate cannot deprive them of the character of public proceedings upon matters of public interest. **TARUCK-NATH MOOKERJEE v. MOHENDRONATH GHOSH**

[13 W. R., 56]

MOOCHER RAM MAJHEE v. BISSAMBHUR ROY CHOWDERY 24 W. R., 410

272. ——— Suit for abatement of rent.—Lands washed away.—Measurement papers.—In a suit for abatement of rent on the ground that part of the talook has been washed away by a river, measurement papers prepared by the revenue authorities in a case between Government and the talookdar, in respect of a share belonging to Government in the zemindari of the zemindar, are not admissible as evidence against the latter, they being *res inter alios acta*. **AFZUBOODDEN v. SHOROSSHEE BALA DARRA** **Marsh., 558; 2 Hay, 664**

273. ——— Thakbust papers.—Loazima and thaka papers.—Loazima and thaka papers are legal evidence *quantum valeant*. **SHUSHEE MOOKHEE DOSSEE v. BISSESSUREE DABEE** 10 W. R., 343

274. ——— Evidence against proprietors of estates.—Thakbust papers are *prima facie* evidence against the proprietors of estates comprehended in them. **KALEE TARA DEBIA v. NITTAFUND SHAHA** 12 W. R., 90

275. ——— Translations.—Translation of document by Court Interpreter.—Authority of.—Held that the translation of a deed by the interpreter of the Court must be accepted *prima facie* as correct, and as evidence of the contents of the deed. **MUZUR HOSSEIN v. DINOBUNDO SEN**

[Bourke, O. C., 8: Cor., 94]

276. ——— Variation of rent, Proof of.—Zemindar's papers.—Zemindar's papers filed or attested by gomastahs are not conclusive proof of variation, unless it can be shown not merely that the jama-wasil-baki and similar papers show a varying rate, but that the ryot has paid at a varying rate. **GOPAL MUNDUL v. NOBO KISHEN MOOKERJEE**

[5 W. R., Act X, 83]

277. ——— Wajib-ul-urz.—Pre-emption.—Custom.—Record of rights.—Onus probandi.—A wajib-ul-urz prepared and attested according to law is *prima facie* evidence of the existence of any custom of pre-emption which it records, such evidence being open to be rebutted by any one disputing such custom. When such a wajib-ul-urz records a right of pre-emption by contract between the shareholders, it is evidence of a contract binding on all the parties to it and their representatives, and there will be a presumption that all the shareholders assented to the making of the record and in consequence were consenting parties to the contract of which it is evidence, and it will be

EVIDENCE—CIVIL CASES—continued.**11. MISCELLANEOUS DOCUMENTS—continued.****Wajib-ul-urz—continued.**

for those shareholders repudiating such contract to rebut such presumption. **ISBI SINGH v. GANGA**

[I. L. R., 2 All., 878]

12. SECONDARY EVIDENCE.**(a) GENERALLY.**

278. ——— Production of best evidence.—Written documents.—Evidence of authority of agent.—It is a cardinal rule of evidence, not one of technicality but of substance, which it is dangerous to depart from, that where written documents exist they shall be produced as being the best evidence of their own contents. Special authority of an agent to sign an acknowledgment of debt under section 20, Act IX of 1871, cannot be proved by secondary evidence of the contents of a letter, the non-production of which is not satisfactorily accounted for. **DINOMOYI DEBI v. ROY LUCHMIPUT SINGH**

[L. R., 7 I. A., 8]

MAN SINGH MAHTOON v. BHAIK NARAIN MAHTOON 19 W. R., 210

279. ——— Condition for admission of secondary evidence.—Accounting for non-production of original of document.—Evidence of contents of document.—By the law of evidence administered in England, which has been in a great measure, with respect to deeds, made the law of India, the first condition of the right to give secondary evidence of the contents of a document not produced in Court, is the accounting for the non-production of the original. **BHUBANESWARI DEBI v. HARISARAN SUMA MOITRA** I. L. R., 6 Cal., 730; 8 C. L. R., 337

280. ——— Evidence Act, s. 91.—Oral evidence where pottah is not produced.—Where the contents of a lease (pottah) are in any way in question, it is necessary to prove them by the production of the document; where this is not the case, but it is only necessary to prove possession for 12 years, then, although the lease would have shown it, oral evidence of the pottah is admissible. **KEDAR NATH JOARDAR v. SURFOONNISA BIBEE**

[24 W. R., 425]

281. ——— Non-procurability of original document.—Until a party has exhausted all the means prescribed by law for compelling a witness to produce a document known to be with him, and so long as the original is procurable, or its loss not satisfactorily accounted for, secondary evidence cannot be admitted. **GREENH CHUNDEE LAHOOREE v. RAMLOLL SIRCAR. ROOPMONJOORE CHOWDHRAIN v. RAMLALL SIRCAR** 1 W. R., 145

MUHAMMAD WALAD ABDUL MULUA v. ISRAHIM WALAD HASAN 3 Bom. A. C., 160

WUZNEE ALI v. KALEE COOMAR CHUCKERBUTTY [11 W. R., 223]

282. ——— Proof of coming from proper custody.—In accordance with former rulings,

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(a) GENERALLY—continued.****Proof of coming from proper custody—continued.**

Allucha v. Kashoo Chunder Dutt, 1 W. R., 181; and *Gooroo Pershad Roy v. Bykunto Chunder Roy*, 6 W. R., 82, it was held that, before a document, of whatever age it may be, can be put in as legal evidence, there must be sworn testimony as to the custody from which it has come. *KALEE TARA DEBI v. NITIANUND SHAHA*. 12 W. R., 90

288. ——— **Proper custody.—Identity of signature.**—Where a pottah had no attesting witnesses and was not capable of direct proof, it was held to have been established by the fact of having come from proper custody, corroborated by the exact identity of the grantor's signature with his admitted signature on other documents. *BINODE BAHAREE ROY v. MASSEYK*. 15 W. R., 493

(b) UNSTAMPED OR UNREGISTERED DOCUMENTS.

284. ——— **Unstamped document.—Lost unstamped document requiring stamp.**—Secondary evidence cannot be given of a lost instrument requiring a stamp which was not stamped. *ARUN-CHELLUM CHETTY v. OLAGAPPAH CHETTY* [4 Mad., 312

285. ——— **Notice to produce.—Evidence Act, s. 91.**—Secondary evidence tendered to prove the contents of an instrument which is retained by the opposite party after notice to produce it can only be admitted in the absence of evidence to show that it was unstamped when last seen. *SENNANDAN v. KOLLIKIRAN* [I. L. R., 2 Mad., 208

286. ——— **Evidence Act, s. 91.—Oral evidence of written contract.**—Where a contract is reduced to writing and the only cause of action between the parties arises out of the document, no oral evidence is admissible to prove the terms of the contract. *PROSUNNO NATH LAHIRI v. TRIPURA SOONDUREN DASEN*. 24 W. R., 88

287. ——— **Parol evidence.—Proof of delivery.—Suit for goods sold and delivered.**—In a suit, which was brought for the price of goods sold and delivered, the plaintiff swore to the fact of the sale, and tendered in evidence a written admission of the defendant, that the goods had been supplied to him. The writing was rejected as unstamped, and the suit was dismissed. *Held* that the Judge should have allowed the plaintiff an opportunity of proving by oral testimony the delivery of the goods sold, and their value. *BINJA RAM v. RAJMOHUN ROY*. I. L. R., 8 Cal., 282

288. ——— **Evidence Act, s. 91.—Admissibility of evidence.—Proof of consideration.**—The plaintiff, in a suit on a promissory note written on unstamped paper, is not debarred from giving independent evidence of consideration. *GOLAF CHAND MARWARAN v. MOHOKOOM KOGARAN* [I. L. R., 3 Cal., 314; 2 C. L. R., 412, note

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—continued.****Unstamped document—continued.**

See KANHAYA LAL v. STOWELL

[I. L. R., 3 All., 581

and *BENARSI DAS v. BHIKHARI DAS*

[I. L. R., 3 All., 717

289. ——— **Evidence Act, s. 91.—Debt.—Promissory note.—Written acknowledgment of debt.—Oral acknowledgment.—Evidence of debt.**—*H.* lent Rs5 to *D.* on a pledge of moveable property. *D.* repaid *H.* Rs40; and at the time of the repayment acknowledged orally that the balance of the debt, Rs45, was still due by him. It was agreed between the parties at the same time that *D.* should give *H.* a promissory note for such balance, and that such property should be returned to him. Accordingly *D.* gave *H.* a promissory note for Rs45, and the property was returned to him. *H.* subsequently sued *D.* on such oral acknowledgment for Rs45, ignoring the promissory note, which being insufficiently stamped was not admissible in evidence. *Held* that the existence of the promissory note did not debar *H.* from resorting to his original consideration, nor exclude evidence of the oral acknowledgment of the debt. *HIBA LAL v. DATADIN*. I. L. R., 4 All., 135

290. ——— **Suit for money lent, secured by unstamped promissory note.—Decree against Hindu family.**—A promissory note, which being improperly stamped was inadmissible in evidence, was executed in favour of *E.* by *K.* and *N.*, members of an undivided Hindu family, in consideration of a loan made to them. The money was used for the purpose of family trade. *E.* sued *K.* and *N.* and their father *P.* and other members of the family to recover the money lent. *Held* that the existence of the promissory note was no bar to the suit, and that *E.* was entitled to a decree against *K.* and *N.* and against *P.* to the extent of the family property in his hands. *KRISHNASAMI PILLAI v. RANGASAMI CHETTY* [I. L. R., 7 Mad., 112

291. ——— **Promissory note.—Note of agreement in account book.—Evidence of terms of agreement.**—In 1876 accounts were stated between *B.* and *D.*, and a balance of Rs800 was found to be due from *D.* to *B.* *D.* gave *B.* an instrument whereby he agreed to pay the amount of such balance in four annual instalments of Rs200. *B.* at the same time noted in his account book that "such balance was payable in four instalments of Rs200 yearly." In July 1879 *B.* sued on the instrument for the balance of the first instalment, but the Court held it was a promissory note, and as it was unstamped refused to receive it in evidence. *B.* thereupon withdrew his suit with liberty to bring a fresh one. In the subsequent suit *B.* based his claim on the note in his account book. *Held* by the Court that the agreement by *D.* to pay the balance found due from him to *B.* on accounts stated between them in instalments of Rs200 annually could not be proved by the note made by *B.* in his account book

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—continued.****Unstamped document—continued.**

but could only be proved by the promissory note.
BNARSI DAS v. BHIKHARI DAS

[I. L. R., 3 All, 717]

See **GOLAP CHAND MARWARIE v. MOHOKOOM KOOAREE**

I. L. R., 3 Calc., 814

and **KANHAYA LALL v. STOWELL**

[I. L. R., 3 All, 581]

292. ——— Evidence Act, s.

s. 91.—Bill of exchange.—Original consideration.—Evidence.—Stamp.—Account stated.—When a cause of action for money is once complete in itself, whether for goods sold or for money lent, or for any other claim, and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may always, as a rule, sue for the original consideration, provided that he had not endorsed, or lost, or parted with the bill or note, under such circumstances as to make the debtor liable upon it to some third person. But when the original cause of action is the bill or note itself, and does not exist independently of it, as, for instance, when, in consideration of *A.* depositing money with *B.*, *B.* contracts by a promissory note to repay it with interest at six months' date, here there is no cause of action for money lent, or otherwise than upon the note itself, because the deposit is made upon the terms contained in the note, and no other. In such a case the note is the only contract between the parties, and if for want of a proper stamp or some other reason the note is not admissible in evidence, the creditor must lose his money. **AKBAR v. SHEIKH KHAN**

[I. L. R., 7 Calc., 256; 3 C. L. R., 533]

293. ——— Evidence Act,

s. 91.—Accounts stated.—Bond given for balance.—Bond impounded as insufficiently stamped.—Suit on accounts stated.—Where accounts between a creditor and his debtor were stated, and the latter gave the former a bond for the balance found due by him to the creditor,—*Held* that the creditor was precluded from subsequently suing on the account stated for the balance which had been found due. **SIRDAR KUAR v. CHANDRAWATI**

I. L. R., 4 All., 330

294. ——— Hundi insuffi-

ciently stamped.—Proof of original consideration by parol evidence.—*V. E.* drew a hundi in favour of *M. K.* upon *M. & Co.*, who, upon presentation, paid part of the amount due and referred the payee to the drawer for the balance. *M. K.* sued *V. E.* to recover the balance. *V. E.* pleaded that the hundi was inadmissible in evidence, not being properly stamped, alleging that it had been issued with a slip attached to the effect that it was payable ten days after sight, and this slip had been removed, making it appear to be payable on demand. The Munsif found this plea to be proved, but held that *V. E.* having admitted the grant of the hundi, *M. K.* might recover upon the original consideration without using the hundi in evidence,

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—continued.****Unstamped document—continued.**

and decreed for *M. K.* *V. E.* appealed, but not on the ground that the hundi was inadmissible in evidence as being improperly stamped and altered in a material part. The District Court confirmed the Munsif's decree. *Held* on second appeal that the suit must be dismissed on the ground that it was based upon the hundi, which was inadmissible in evidence, being insufficiently stamped. **VALIAPPA RAVUTHANNA v. MAHOMMED KHASIM**

I. L. R., 5 Mad., 163

295. ——— Evidence Act,

s. 91.—Bill of exchange insufficiently stamped, Admissibility of.—Amendment of plaint.—Stamp Act, 1869, ss. 20, 28.—Evidence independent of the bill.—Where a bill of exchange for the sum of Rs. 1,000 drawn, accepted, and endorsed, is insufficiently stamped, it is not receivable in evidence in a suit on the note, even on payment of a penalty. Where such a suit is brought by the endorsee against his immediate endorser, the Court may not, if the application be not made in proper time, allow the plaint to be amended so as to recover on a count for money paid to the defendants, even though the plaintiff may be allowed to bring a fresh suit. Sections 5, 8, 19, 20, 26, 28, of the General Stamp Act, XVIII of 1869, discussed. **Golab Chand Marwari v. Mohokoom Kooaree**, I. L. R., 3 Calc., 814; 3 C. L. R., 412, note, not followed. **MOTHOORA MOHUN ROY v. PHARY MOHUN SHAW**

2 C. L. R., 409

See **AUKUR CHUNDER ROY CHOWDHRY v. MADHUR CHUNDER GHOSH**

21 W. R., 1

296. ——— Unregistered document.

—Sodi razinama.—Deed of relinquishment to landlord.—The document called a sodi razinama (whereby a party relinquishes his right of occupancy of land in his possession to his landlord, and requests the latter to register the land in the name of another party to whom it has been sold) is not a document of the kind mentioned in section 91 of the Evidence Act, and therefore does not exclude the Courts from basing their findings upon other evidence, should any such exist. **VENKATESA v. SENGODA**

I. L. R., 2 Mad., 117

297. ——— Evidence Act,

s. 91.—Deed of partition.—A deed of partition was executed among three brothers, *C.*, *N.*, and *B.*, on the 19th March 1867, but was not registered. It recited that, some years previously to its date, a division of the family property, with the exception of three houses, had been effected, and it purported to divide those houses among the brothers. In a suit brought by *C.*'s widow for the recovery of the house which fell to *C.*'s share,—*Held* that, although the deed did not exclude secondary evidence of the partition of the family property previously divided, yet it affected to dispose of the three houses by way of partition made on the day of its execution, and, therefore, secondary evidence of its contents was inadmissible under section 91 of the Evidence Act. **KACHUBHAI BIN GULABCHAND v. KRISHNABAI**

[I. L. R., 2 Bom., 635]

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—continued.****Unregistered document—continued.**

298. ————— *Endorsement.*—*Deed of sale.*—The plaintiff executed a deed of sale of a moiety, and a lease of the other moiety, of certain land to B. B. instituted a suit under Act XIV of 1859, which was dismissed. B. then returned the deed of sale and lease to A., with the following endorsement under his signature, *viz.*, "Returned; no claim." A. instituted the present suit for recovery of possession of the said property, and the defendant set up in his defence that A. had no right to sue for a moiety of the property, as the same had been conveyed to B.; and that the endorsement of the deed of sale, "Returned; no claim," was not admissible in evidence, as the same had not been registered. *Held* that the entry was only evidence that the transaction was inchoate, and not final, so as to require a re-conveyance. *GIRISH CHANDRA ROY CHOWDREY v. AMINA KHATUN* . . . **3 B. L. R., Ap., 125**

299. ————— *Instalment bond.*—*Unregistered pottah and kabuliat.*—*Set-off.*—Plaintiff sued in a Small Cause Court on an instalment-bond for Rs1. The bond had been executed for *musur* or *salami* contemporaneously with the execution of a pottah and kabuliat, by which the defendants agreed to pay the plaintiff Rs35 a year for two years, as rent for certain land. The pottah and kabuliat had not been registered. A previous suit brought by the plaintiff under Act X of 1859 had been, therefore, dismissed, and no oral evidence was admitted to prove the terms of the pottah and kabuliat. The defendants now claimed a set-off against the amount claimed under the bond on the footing of a contract contained in the pottah and kabuliat. The Judge refused to receive them in evidence, or to receive oral evidence of their contents, and gave a decree in favour of the plaintiff, subject to the opinion of the High Court. *Held*, the defendant having benefited in the Act X suit by the fact that no oral evidence had been admitted to prove the contents of the pottah and kabuliat, it would have been contrary to rule and inequitable to admit such evidence now in support of his claim of set-off. *DINANATH MOOKERJEE v. DEBNATH MULLICK* . . . **[5 B. L. R., Ap., 1: 13 W. R., 307]**

300. ————— *Evidence Act, s. 65.—Mortgage.*—*Suit for ejectment.*—Where a mortgage deed had not been registered in accordance with section 13 of Act XVI of 1864.—*Held*, in a suit for ejectment where the mortgage deed was set up by the defendant, who claimed possession under it, that secondary evidence of it could not be given under section 65, Evidence Act. *DIVETHI VARADA AYYANGAR v. KRISHNASAMI AYYANGAR* . . . **[I. L. R., 6 Mad., 117]**

301. ————— *Document inadmissible from want of registration.*—*Admission as to contents.*—A written contract can only be proved by the production of the writing itself; and

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—continued.****Unregistered document—continued.**

if the document is inadmissible from want of registration, no secondary evidence of the contract can be received. A party's admission as to the contents of a document not made in the pleadings, but in a deposition, is secondary evidence, and cannot supply the place of the document itself. *IBRAHIM VALAD LADLI MIYA v. PARVATA VALAD HARI* . . . **[8 Bom., A. C., 163]**

302. ————— *Destruction of deed, Proof of.*—*Admission of registered copy.*—In a suit on a bond, the defendant by his answer denied execution of the bond. The plaintiff in his reply stated the accidental destruction of the bond, and prayed leave to put in evidence a registered copy thereof, which the Court allowed, and at the same time ordered the fragments of the original to be produced. At the trial the plaintiff produced the fragments, and under section 11, Madras Regulation XVII of 1802, put in as evidence a registered copy of the bond. He called no witnesses to prove that the fragments produced formed part of the original bond. The Court admitted the registered copy as evidence, and found for the plaintiff. The Judicial Committee on appeal reversed this finding, on the ground that the registered copy, in the absence of satisfactory evidence of the destruction of the original bond, was improperly admitted as secondary evidence. *ABBAS ALI KHAN v. YADNEEM RAMY REDDY* . . . **[3 Moore's L. A., 156]**

303. ————— *Proof of reason for its non-registration.*—It is not enough for a party desirous of adducing secondary evidence of the contents of a document which ought to have been registered, to show that he cannot produce it because it is not registered; he must show that its non-registration was not due to any fault or want of diligence on his part, or he must show that the party against whom he desires to use it was guilty of such fraud in the matter of non-registration that he cannot be allowed to object on that ground to the production of the secondary evidence. *KUMERZOODDEEN HADAR v. RUJUB ALI SHAHA* . . . **9 W. R., 528**

304. ————— *Document not produced because unregistered.*—The fact that a pottah on which a plaintiff's title is based has not been registered, and consequently cannot be used by reason of the registration law and is therefore not produced, is not a good ground on which a Court would be justified in admitting secondary evidence on the ground that the absence of the original is satisfactorily accounted for. *CROWDIE v. KULLAR CHOWDREY* . . . **[21 W. R., 307]**

(c) LOST OR DESTROYED DOCUMENTS.

305. ————— *Lost deed.—Attesting witnesses.*—Where a Court is satisfied that a deed was executed, and has been lost or destroyed, it should re-

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(c) LOST OR DESTROYED DOCUMENTS—continued.****Lost deed—continued.**

ceive secondary evidence of the contents, documentary or oral; and it is not necessary that the witnesses called in to give oral testimony should be attesting witnesses. *LOTFOOLLAH v. NUSSEEBUN*

[10 W. R., 24]

306. ——— Destroyed document.—*Claim for zemindari dues.*—A claim for zemindari dues in respect of the sale of garden trees ought not to be allowed on mere usage alone, but it should also be enquired into whether such dues were recognised and recorded in the settlement papers as required by Regulations VII of 1822, section 9, and IX of 1825, section 9. Where the settlement papers are destroyed and not forthcoming, the contents in respect of the dues claimed may be ascertained by the other best evidence procurable. *PAUL RAI v. RAM HIT PANDAY*

[1 Agra, 139]

307. ——— Lost record.—Additional evidence.—Where a party obtained a decree which was appealed from, and in transit from the first to the second Court, the record was irrecoverably lost, the High Court directed the lower Appellate Court to receive secondary evidence from both parties of the papers which made up the entire record, or, failing this, additional evidence under section 355, Act VIII of 1859. *GOOROO DOYAL SINGH v. DUBBAREE LALL TEWARREN*

7 W. R., 13

308. ——— Loss or destruction of document.—Evidence Act (I of 1872), s. 65, cl. (c).—Bond.—In a suit by the purchaser of a debt, the plaintiff stated that, in 1873, A. executed a bond in favour of B. to secure the repayment of Rs. 1,000, and that he had purchased the interest of B. at a sale in execution of a decree against him. The plaintiff now sued A. upon the bond, making B. a party. At the trial, A. denied the execution of the bond, and it was not produced by the plaintiff, who, having served B. with notice to produce, tendered secondary evidence of its contents. B. was not examined as a witness, and no evidence was given of the loss or destruction of the bond. *Held* by PONTIFEX and MORRIS, JJ. (PRINSEP, J., dissenting), that secondary evidence was not admissible. *WOMESH CHUNDER GHOSH v. SHAMA SUNDARI BAI*

[I. L. R., 7 Calo., 98; 8 C. L. R., 499]

309. ——— Evidence Act (I of 1872), ss. 63 (c), 114, ill. (g).—Copy of a copy.—Suit for redemption of mortgage.—Withholding evidence.—A deed executed in 1812 became the subject of litigation, resulting, on the 17th May 1813, in a decree, the effect of which was to create a usufructuary mortgage of rights and interests in two villages. In 1871, the purchaser of a portion of the mortgagor's rights, alleging that the mortgage-debt had been liquidated from the usufruct, sued to recover possession of the property. The mortgagees resisted the claim for possession, on the grounds that, prior to the execution of the deed in 1812, the mortgagor's ancestor had granted to their own ancestor a

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(c) LOST OR DESTROYED DOCUMENTS—continued.****Loss or destruction of document—continued.**

gawanda-dari right, under which a fixed jama of Rs. 121 was payable by them in respect of the lands in the village; that what was mortgaged was not the lands, but only the right to receive the fixed jama; and that the fact that the mortgage money had been liquidated from the jama did not entitle the plaintiff to oust them from possession. It appeared that the alleged *gawanda-pattar*, the original mortgage-deed, and the decree of the 17th May 1813, were at one time in the defendants' possession, but the defendants alleged that all three documents were destroyed by fire in 1872. The plaintiff sought to support his case by putting in a copy on plain paper purporting to have been transcribed from a certified copy of the decree of the 17th May 1813. *Held* that the destruction or loss of the three documents alleged by the defendants to have been destroyed not being proved, their non-production placed them under the recognised prohibitions of the law of evidence, and subjected them to the presumption recognised by illustration (g), section 114 of the Evidence Act, that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. *Held*, also, that inasmuch as the plaintiff was no party to the alleged *gawanda-pattar*, nor to the mortgage of 1812, nor to the litigation which resulted in the decree of the 17th May 1813, and could not therefore be taken to be in a position to produce these documents or to prove their contents by secondary evidence; and inasmuch as the circumstances established a *prima facie* case in his favour, the burden of proof in regard to the existence of the alleged *gawanda-dari* tenure lay upon the defendants, who, whilst in a position which would involve their being in possession of the documents above mentioned, and whilst admitting such possession up to the year 1872, had failed to prove either their destruction or their contents by secondary evidence such as could be relied on. *Rajah Kishen Dutt Ram Panday v. Narendar Bahadoor Singh, L. R., 8 I. A., 85*, referred to. *RAM PRASAD v. RAGHUNANDAN PRASAD*

[I. L. R., 7 All., 738]

310. ——— Deed lost in Mutiny.—No copy made.—Where a suit was brought on a mortgage-deed alleged to have been destroyed in the Mutiny, —*Held* that if it were established that the original deed was destroyed, and that there was no copy of it in existence, the Court could receive oral evidence as to its contents, and determine the genuineness or otherwise of the deed on that evidence solely. *SHENOSURUN OJHA v. GOOLBANEE KOOR*

[W. R., 1864, 264]

311. ——— Destroyed document.—Suit to redeem mortgage.—Destruction of mortgage deed.—In a suit to redeem a mortgage it was proved that the mortgagees and their assignee had fraudulently destroyed the deed by which the property was mortgaged. *Held* that the mortgagees could not be permitted to prove the contents of the deed or the

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(c) LOST OR DESTROYED DOCUMENTS—continued.****Destroyed document—continued.**

amount of mortgage-debt by secondary evidence, and that the representative of the mortgager should be allowed to recover the lands without any payment.
ABDULLA v. MUHAMMAD . . . 1 Bom., 177

312. ——— Loss or destruction of document.—Evidence Act, s. 65.—In a case falling under clause (f), section 65 of the Evidence Act, and also under clause (a) or (c) of the same section, any secondary evidence is admissible. **IN THE MATTER OF A COLLISION BETWEEN THE "AVA" AND THE "BRENNHIDA"**

[I. L. R., 5 Cal., 568; 5 C. L. R., 331]

(d) NON-PRODUCTION FOR OTHER CAUSES.

313. ——— Lotbundi.—Evidence of certificate of sale.—A lotbundi cannot be accepted as secondary evidence in lieu of the certificate of sale unless the absence of the certificate is sufficiently accounted for, and no better evidence than the lotbundi can be produced. **USTOORUN v. MOHUN LAL**

[21 W. R., 333]

314. ——— Document in party's custody but not produced.—Ikrarnamah.—Proof of document.—The proprietary right in a taluka was sold with the reservation of part of the land belonging to it, subject to the agreement that the vendor should be indemnified by the vendee in respect of the revenue required to be paid on the reserved part. Afterwards assignments on both sides took place, and the plaintiff, claiming through the vendor, sued the defendants, who derived title from the vendee, to enforce this liability. The plaintiff alleged the existence of, but did not produce, an ikarnamah admitting this agreement between the original parties to the sale. The only proof adduced was a judgment in a suit in which this agreement had been held established. The plaintiff's case failed, as it had not been adjudged that the right to this indemnity related to a future revenue settlement, nor had it been decided that the agreement was to run with the land so as to bind others, under whatever title they might be in possession. In the suit in which that judgment was given, the ikarnamah not having been produced, the Court of first instance would not admit secondary evidence of its contents. On appeal, inspection of the document having been offered to, and declined by, the Appellate Court, secondary evidence was admitted. On this appeal, the error was pointed out of allowing the plaintiff to give secondary evidence of the contents of a document, the original of which was in his custody, without the Court's looking at the document. **HIRA LAL v. GANESH PRASAD**

[I. L. R., 4 All., 406; 11 C. L. R., 109
 I. R., 9 I. A., 64]

315. ——— Failure to produce.—Hibarnamah.—Evidence Act, s. 65.—Where a person's claim to some property rested on a hiba which had been executed in her favour by the brother of the par-

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(d) NON-PRODUCTION FOR OTHER CAUSES—continued.****Failure to produce—continued.**

ties who contested her claim to that property; and the hiba had not been made over to her because it related to various properties of which the property claimed by her formed only a portion; and one of the defendants, whom she had called on to produce the hiba, had failed to do so.—**Held** that plaintiff was entitled, under section 65 of the Evidence Act, to procure secondary evidence of its contents; and, having done so, to get the decree which the first Court had given her and which the High Court now refused to set aside. **SADREHONNISA BIBI v. SHOURUBBY DEBHA** . . . 25 W. R., 459

316. ——— Notice to produce not complied with.—Evidence Act, s. 66.—Where a defendant out of the jurisdiction of the Court was summoned to produce a letter and did not comply with the summons, but appeared by pleader at the last moment at the hearing of the suit, and service of notice on the pleader to produce the letter would have been nugatory, secondary evidence of the contents of the letter was admitted under section 66, proviso 6, of the Evidence Act. **MELLUS v. VICAR APOSTOLIO OF MALABAR** . . . I. L. R., 2 Mad., 295

317. ——— Refusal to produce.—Evidence taken on commission.—Documentary evidence, Objection to admissibility of.—Evidence taken by commissioner beyond jurisdiction.—Notice to produce original document.—Evidence Act (I of 1872), s. 63, sub-ss. 3, 65, 66.—If, when evidence is taken before commissioners, a document is tendered and objected to on any ground, the opposite party is not precluded from objecting to the document at the trial on any other ground. It is not necessary to state all the objections to the admissibility of a document when it is first tendered, but the party objecting is at liberty to take any fresh objection whenever the party producing the document tenders it in evidence. Where a commission to take evidence is issued to any place beyond the jurisdiction of the Court issuing the commission, it is not necessary, in order to admit secondary evidence of the contents of a document, that the party tendering it should have given notice to produce the original, nor is it necessary for him to prove a refusal to produce the original. **RALLU v. GAU KIM SWEE** . . . I. L. R., 9 Cal., 939

318. ——— Power-of-attorney to register referring to power to execute.—Admission of original deed.—A power-of-attorney authorising the registration of a deed of mortgage, and recognising a previous power to execute the deed of mortgage, is admissible as original evidence by way of admission of the previous deed. **HOSSEIN JAN v. MUKHDOOMUN** . . . 2 W. R., 44

319. ——— Counterpart of lease.—Non-production of original lease.—Held that the counterpart of a lease, being a registered document, was admissible in evidence, and could not be rejected

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(d) NON-PRODUCTION FOR OTHER CAUSES—continued.****Counterpart of lease—continued.**

solely on the ground that the original registered lease was not before the Court. **MAJID HOSSEIN v. JERAWON KHEWAT** **3 Agra, 233**

320. ——— **Production of kabuliat.—Absence of pottah.**—*A.* let lands to *B.*, who sublet to *C.*, a ryot. *C.* sued for possession of part, after an alleged dispossession, making *A.* party defendant to the suit. At the hearing *C.*, in order to prove that the lands in dispute were part of those let to him by *B.*, tendered in evidence the kabuliat given by him to *B.* Held that *C.* should have produced the pottah given by him to *B.*, and the grant from *A.* to *B.*, or sufficiently account for their absence; and that, as he did not do either, the kabuliat (which was merely secondary evidence of *C.*'s pottah) was inadmissible, even though it was produced from the possession of the landlord *A.* **SURJO NARAIN GHOSH v. HURRI NARAIN MOLLO** [1 C. L. R., 547]

321. ——— **Non-production of account books.—Beng. Reg. VI of 1798.**—In a suit for a sum alleged to be due on the balance of partnership accounts, the Sudder Court ought, under section 16, Regulation VI of 1798, to have used the evidence to be supplied by the original account books, or to have ascertained that the sum mentioned as the balance due, subject to the objections, was a balance due without objection. **SERTUL BOKOO v. HURKISHEN DOSS** **5 W. R., P. O., 76**

(e) COPIES OF DOCUMENTS AND COPIES OF COPIES.

322. ——— **Copies of documents.—Cause of non-production of original.**—Although the admissibility in India of copies in evidence must not be dealt with by the strict rules prevailing at a *visi prius* trial in England, yet their Lordships were of opinion that when a copy has been in any way received, and it becomes the function of the Judge to consider what weight and value should be given to it, it is the duty of the Judge, in order to test its authenticity, to satisfy himself that there is some reason for producing a copy instead of the original, that there should be some account given in ordinary cases of the original, and some sufficient reason assigned why the original is not produced, and the parties rely upon the copy. In all cases the whole of the circumstances should be looked at in order that the Judge may come to a definite conclusion as to the genuineness of the document in question, and the weight and value which he will attach to it. There is a considerable difference between cases where documents come in as mere links or as part only of the evidence in the case, and those in which the suit is actually brought upon the instrument of which a copy is tendered, and the whole cause of action depends on the proof of the original instrument; strict proof may properly be required in the latter case. Dealing with the present document, their Lordships were not prepared to say that the High Court had miscarried in concluding it

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(e) COPIES OF DOCUMENTS AND COPIES OF COPIES—continued.****Copies of documents—continued.**

to be genuine; but the High Court did not rest upon that document wholly, but proceeded upon the whole of the evidence in the case, which appeared to their Lordships amply sufficient to support the finding of the Court. **RAMGOPAL ROY v. GORDON, STUART & Co.** . . . **17 W. R., 285: 14 Moore's L. A., 453**

323. ——— **Permission to file original.**—Documents tendered as evidence are properly rejected on the ground that they are copies inadmissible under the Law of Evidence, and it is entirely a matter of discretion of the Court in rejecting a copy to allow the party to file the original. **HURESHUR MOJOMDAR v. CHURN MAJHEE** [22 W. R., 355]

324. ——— **Accounting for absence of original.**—A copy of a document should not be received in evidence until all legal means have been exhausted for procuring the original. Where a document is alleged to be in the possession or power of a certain party, such party's denial in pleading that he has ever had the document is not sufficient to justify the omission of the processes the law provides for his testimony, and of his being called on to produce the original. If a Judge is satisfied of a plaintiff's inability to produce an original pottah on which he relies, he ought to allow secondary evidence to be given of the contents of the document; but he should be satisfied, on reasonable grounds, that the evidence gives a true version of its contents, and he should require sufficient evidence of the execution of the pottah. **SHOOKRAM SOOKUL v. RAM LALL SOOKUL** [9 W. R., 248]

325. ——— **Accounting for absence of original.**—A copy of a document cannot be admitted as evidence, unless the absence of the original is properly accounted for; the mere fact of the latter being in another Court is not a sufficient reason. **GOVURMONEE v. HUREE KISHORE ROY** [10 W. R., 338]

RAKHAL DASS BUNDOPADHYA v. INDURMONEE DABEE **1 C. L. R., 155**

326. ——— **Attested copy where original is filed in another case.**—An attested copy of a petition was admitted as evidence where the original was with the record of a different case, and application had been made to the Court to send for such record. **GOPIENDRO MOHUN MOOSTAFEE v. POORNO CRUNDER BRUTTAACHARJEE** [19 W. R., 85]

327. ——— **Copy of deed.—Admissibility in evidence.—Explaining absence of original.**—Copy of a deed refused in evidence as the absence of the original was not sufficiently accounted for. **ANUNDA MOYES DASSEE v. MACKENZIE** [W. R., 1864, 5]

WATSON & Co. v. SHAM LALL PANDAH [10 W. R., 73]

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(e) COPIES OF DOCUMENTS AND COPIES OF COPIES—continued.****Copies of documents—continued.**

ISHAN CHUNDER CHOWDERY v. BYRUE CHUNDER CHOWDERY **5 W. R., 21**

328. ————— *Explaining absence of original.*—A plaintiff filing copies of documents is bound to explain why the originals have not been filed. **RAM JOY SURMA v. FRANKISHEN SINGH. BURODA DEBIA v. RAM KISHEN SINGH. PROMODA DEBIA v. FRANKISHEN SINGH**

[2 W. R., 80]

329. ————— *Admission of existence of original.*—A copy of a disputed deed cannot be taken as evidence without proof that the original is out of the power of the party producing the copy. The admission of the existence of the original is not tantamount to an admission of the correctness of the copy. **KURUM v. RUTUN BHUGGUT**

[W. R., 1864, 186]

330. ————— *Proof of correctness of copy.*—The absence of an original deposition from the record must be satisfactorily accounted for before a copy can be looked at; and such copy should be proved to be a correct copy before it can be used. **ROHIN LALL v. DINDYAL LALL**

[21 W. R., 257]

LUKHIMONI DOSHER v. KORUNA KANT MOITREO

[3 C. L. R., 509]

331. ————— *Proof of execution of document where copy is produced.*—In order to prove legally the execution of a document, of which a copy only is on the record, it is not enough for the witness to depose that he executed a document of that nature; the purport of the copy must be read to him, and he must be asked whether the original of the same was what he executed. **KAMOOLA KHANUM v. MOHAMED ESA KHAN** **13 W. R., 429**

332. ————— *Absence of objection.*—Though a copy of a document should not be put in as evidence when the original itself is available, yet in a case in which a copy of a letter was filed without objection in the Court of first instance, and the writer of the letter (one of the defendants) was cross-examined as to it, the lower Appellate Court was held not to be justified in refusing to consider that the copy was evidence of the letter. **FEGREDO v. MAHOMED MODDESSUR** **10 W. R., 267**

333. ————— *Evidence Act, 1872, s. 68.—Comparison of copy with original.*—Held, with reference to the provisions of section 63 of the Evidence Act (I of 1872), that there being no evidence proving that the copy produced by the plaintiff had been compared with the original decree, the copy was not admissible in evidence, inasmuch as it could not be regarded either as primary or as secondary evidence of the contents of the original decree. **RAM PRASAD v. RAGHUNANDAN PRASAD**

[I. L. R., 7 All., 738]

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(e) COPIES OF DOCUMENTS AND COPIES OF COPIES—continued.****Copies of documents—continued.**

334. ————— *Certified copy.*—*Evidence Act, s. 65, cl. (f).*—*Secondary evidence of destroyed record.*—*Certified copy not essential.*—The rule laid down in section 65 of the Evidence Act that a certified copy is the only secondary evidence admissible when the original is a document of which a certified copy is permitted by law to be given in evidence, does not apply where the original has been lost or destroyed. **KALANDAN v. KUNHUNNI**

[I. L. R., 6 Mad., 80]

335. ————— *Mortgage decree lost.*—*Evidence of foreclosure.*—*Evidence Act, s. 63.*—In 1840 K. mortgaged a certain house to two brothers, E. and C. The mortgage deed contained a *gahan lahan* clause, or clause of conditional sale. It appeared that in 1852 the mortgaged house passed into the possession of E. and C., and it was alleged that in that year the mortgage had been foreclosed. At a subsequent partition of the family property the house fell to the share of E., whose widow P. (defendant No. 1) sold it to L. (defendant No. 2) in 1868, and L. in 1871 sold it to T. (defendant No. 3). In 1881 T. brought this suit to redeem the property. The foreclosure decree of 1852 was not forthcoming, and the defendants alleged that it had been burned along with other judicial records at the burning of the Budhvar Palace at Poona in 1879. The only evidence that such a decree had been passed was a reference to a copy of the decree contained in a judgment passed in another suit, and a statement by C. (who was dead in 1881) that the mortgage had been foreclosed. The Lower Courts held that the reference in the above-mentioned judgment to the copy of the foreclosure decree was sufficient evidence of the original decree under section 63 of the Evidence Act (I of 1872). On appeal,—Held by the High Court that there was no legal evidence that the mortgage had been foreclosed. A written statement of the contents of a copy of a document, the original of which the person making the statement has not seen, cannot be accepted as an equivalent of that which section 63 of the Evidence Act renders admissible, namely, an oral account of the contents of a document given by some person who has himself seen it. C's statement could not be made use of to establish the foreclosure. **KANAYALAL v. PYARABAI** **I. L. R., 7 Bom., 139**

336. ————— *Copy of document alleged to be lost.*—A copy of a document, purporting to be the copy of an original kobala alleged to have been registered by a Kaze, is not admissible in evidence within the provisions of Regulation XXXVI of 1793, section 17. It might possibly be receivable as evidence if the accuracy of the first copy, and the execution and loss of the original, were proved. **SREEMUNT KOWAR v. AKBAR MUNDUL**

[8 W. R., 438]

337. ————— *Copy of Kaze's register.*—*Proof of loss.*—A copy of a Kaze's regis-

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(e) COPIES OF DOCUMENTS AND COPIES OF COPIES—continued.****Copies of documents—continued.**

ter is not receivable in evidence. The register itself should be produced or proof given of its loss, and the entry should be verified. **JAFFREH KHANUM v. IM-DAD HOSSEIN** **2 N. W., 314**

338. ————— *Copy of translation of Magistrate's order in English.—Evidence of admission.*—A copy of translation of what a Magistrate is supposed to have said in English in a proceeding under Act IV of 1840 is no evidence of an admission. **RAMJEE LALL v. ANDERSON** . **7 W. R., 141**

339. ————— *Copy of income tax returns.*—Copies of income tax returns should not be admitted as evidence without proof that the persons who made them are dead. **LALLA GOOROO SARHAYE SINGH v. BROMO DEONARAIN** **[W. R., 1864, Act X, 105]**

340. ————— *Copy of public document.—Practice of native Courts in India.*—The native Courts of India, in receiving evidence, do not proceed according to the technical rules adopted in England, and they would, by their usual practice, admit a copy of a public document authenticated by the signature of the proper officer as *prima facie* evidence, subject to further enquiry if it were disputed. **NARAGUNTY LUCHMEDAVAMAH v. VENGAMA NAIDOO** **1 W. R., P. C., 30**
[9 Moore's L. A., 68]

UNIDE RAJAH RAJI VENKATAPRERUMAL RAUZE v. PEMMASAMY VENKATADRY NAIDOO
[4 W. R., P. C., 121]
7 Moore's L. A., 128

341. ————— *Proper custody.*—*Certified copy.*—A copy of a document coming out of a public office, and certified by the officer in charge of that department to be a true copy, is admissible in evidence. **UNIDE RAJAH RAJI VENKATAPRERUMAL RAUZE v. PEMMASAMY VENKATADRY NAIDOO**
[4 W. R., P. C., 121; 7 Moore's L. A., 128]

See **DEVANI GOYALI v. GODABHAI GODBHAI**
[11 W. R., P. C., 35]

342. ————— *Copy of record-keeper's report.*—A copy of a record-keeper's report is not evidence, nor is a copy of a Magistrate's proceeding in a suit regarding other property covered by the deed in dispute. **DWARKANATH BOSE v. CHUNDERN CHURN MOOKERJEE** **1 W. R., 339**

343. ————— *Copy of quinquennial register.—Non-production of original.*—An examined copy of a quinquennial register is evidence without the production of the original. **OODOY MONKEE DABEE v. BISHONATH DUTT** . **7 W. R., 14**

344. ————— *Copy from office of Registrar of Deeds.*—The circumstances that a copy of a document has been obtained from the office of a Registrar of Deeds does not make that registered

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(e) COPIES OF DOCUMENTS AND COPIES OF COPIES—continued.****Copies of documents—continued.**

document evidence, or render it operative against the persons who appear to be affected by its terms. **FYZE ALI v. OMEDEH SINGH** . **21 W. R., 265**

345. ————— *Copy of decree.—Decree, Destruction of.*—After an appeal was filed the decree was destroyed. *Held* that a copy in the possession of the appellant might be received upon evidence being given of its authenticity. **BISHENDYAL SINGH v. KHADDEMA**
[Marsh., 213; 1 Hay, 584]

346. ————— *Destruction of document.*—Where a *wajib-ul-urz* was destroyed in the Mutiny, and the plaintiff tendered in evidence a book obtained from the tehsheel office, which purported to contain a copy of such *wajib-ul-urz* and of the signatures of the persons signing the original, and the name of the official in whose presence the instrument was executed, and the Court below was satisfied that there was no reason to doubt its being a genuine copy,—*Held* that such copy was evidence, not of a contemplated *wajib-ul-urz*, but of one which had been executed and completed. **DARREN DUT v. ENAIT ALI**
[2 N. W., 395]

347. ————— *Lost document.—Certified copy.*—Secondary evidence of the contents of a document is admissible where the Court is satisfied that the document has been lost, and in such a case it is open to the Court to receive oral evidence of the transaction involved, and it is not necessary to insist on the production of a certified copy. A deed of sale is not a document of which a certified copy is permitted by law to be given in evidence, *i.e.*, to be given in evidence in the first instance without having been introduced by other evidence. **HURISH CHUNDER MULLICK v. PROSUNO COOMAR BANERJEE**
[22 W. R., 303]

348. ————— *Copy of copy of document.—Proof of execution of original.*—An authenticated copy of an authenticated copy of a deed is admissible as secondary evidence; but proof of the execution of the deed itself must be given before the copy can be admitted. **TAYUBUNNISSA BIBI v. KUWAR SHAM KISHORE ROY** . **7 B. L. R., 621; 15 W. R., 226**

349. ————— *Previous failure to produce original.*—An original document upon which the plaintiff based his suit was proved to be in the possession of the defendant. In a previous suit the defendant's mother had filed the document, and on removing it had, according to the rules of practice, placed a copy there instead. The defendant on being summoned failed to produce the same. *Held* that a copy of such copy, so filed in Court, was admissible as evidence. **MAKBUL ALI v. MASNAID BIBI**
[3 B. L. R., A. C., 54; 11 W. R., 396]

350. ————— *Public document.—Lost original.*—The copy of a copy of a docu-

EVIDENCE—CIVIL CASES—continued.**12. SECONDARY EVIDENCE—continued.****(e) COPIES OF DOCUMENTS AND COPIES OF COPIES—continued.****Copy of copy of document—continued.**

ment may be admitted as evidence when it comes from a public office, and the original is shown to have been lost, but not otherwise. **COURT OF WARDS v. BUNWARRE LALL THAKOOR** . 15 W. R., 102

351. ——— Absence of original explained.—A certified copy of a document deposited in a public office, which document is itself a copy, is admissible as secondary evidence where the absence of the original is duly accounted for. **BHULABHAI GULLABHAI v. MODJI DESALJI** [5 Bom., A. C., 48

352. ——— Sanad.—A copy of a copy of a sanad is not admissible in evidence. **NEELANUND SINGH v. NUSSEEB SINGH** [6 W. R., 80

EVIDENCE—CRIMINAL CASES.

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[B. L. R., Sup. Vol., 459
3 B. L. R., F. B., 2, note
5 W. R., Cr., 59

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[I. L. R., 1 Bom., 610
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[11 B. L. R., Ap., 5

1. CHARACTER.

1. ——— Bad character, Evidence of.—Evidence of bad character should not be put before the jury, but is only for consideration of the Judge in determining the sentence to be awarded. **QUEEN v. MAHIMA CHANDRA DASS**

[6 B. L. R., Ap., 108; 15 W. R., Cr., 37

QUEEN v. PHOOLCHAND alias PHOLEEL AHIE [8 W. R., Cr., 11

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2. ——— It is improper to allow witnesses for the prosecution to state that the accused is not of good character. **REG. v. TIMMI** [2 Bom., 131; 2nd Ed., 125

3. ——— Previous conduct and character.—Evidence of character and previous conduct of a prisoner, being matters of prejudice and not direct evidence of facts relevant to the charge against the prisoner, ought not to be allowed to go to the jury. **QUEEN v. BYKANT NATH BANERJEE** [10 W. R., Cr., 17

4. ——— In charging a jury, a Sessions Judge should not tell them that the prisoners had previously been bad characters. That fact might be taken into consideration by a Sessions Judge in passing sentence when the prisoners are convicted. **QUEEN v. KULUM SHRIKH** [10 W. R., Cr., 39

5. ——— Evidence Act, s. 54.—In charging the jury upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused. *Held* that this amounted to a misdirection: for though section 54 of the Evidence Act declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible. **ROSHUN DOSADH v. EMPRESS**

[I. L. R., 5 Calc., 768; 6 C. L. R., 219

2. CHEMICAL EXAMINER.

6. ——— Report of Chemical Examiner.—*Criminal Procedure Code (Act XXV of 1861), s. 370.*—Under section 370, Act XXV of 1861, the report of a Chemical Examiner is evidence in a

EVIDENCE—CRIMINAL CASES—continued.**2. CHEMICAL EXAMINER—continued.**

Report of Chemical Examiner—continued.
criminal trial if it bear the signature of the Examiner. The original should be produced. *QUEEN v. BISWAM-BHAR DAS*

[6 B. L. R., Ap., 122: 15 W. R., Cr., 49

7. ——— *Criminal Procedure Code, 1869, s. 380A.*—The report of the Chemical Examiner to Government may be acted upon as evidence by all Criminal Courts, by virtue of section 380A of the amended Code of Criminal Procedure. *ANONYMOUS* . . . 6 Mad., Ap., 11

8. ——— **Report of "Additional Chemical Examiner."**—*Criminal Procedure Code.—Act X of 1882, s. 510.*—A document purporting to be a report under the hand of an "Additional Chemical Examiner" upon a matter or thing submitted to him for analysis and report, cannot be received in evidence under section 510 of Act X of 1882. *QUEEN-EMRESS v. AYTAL MUCHI* . . . I. L. R., 10 Cal., 1026

9. ——— **Inquest Report.**—*Bom. Reg. XII of 1827, s. 52.—Bombay Act VIII of 1867.—Regulation XII of 1827, section 52,* having been repealed by (Bombay) Act VIII of 1867, an inquest report is not admissible in evidence. *REG. v. BHAI SHANKUR NARBHEEM* . . . 6 Bom., Cr., 75

3. DEPOSITIONS.

See CASES UNDER EVIDENCE ACT, 1872, s. 83.

10. ——— **Mode of recording depositions.**—*Criminal Procedure Code, 1882, s. 355.—Criminal Procedure Code, 1861, s. 195.—Memo. of depositions of witnesses.*—A memorandum by a Judge that certain witnesses had deposed the same as the former witnesses is not in accordance with the requirements of section 195, Code of Criminal Procedure. *QUEEN v. MUTTIE NUSHYO*
[W. R., 1864, Cr., 18

11. ——— **Mode of recording deposition, Evidence of.**—The evidence of a writer in the Judicial Commissioner's office, to the effect that "the document shown to him is a deposition taken before the Assistant Commissioner; it appears to have been taken in due form upon solemn affirmation, and is attested by the signature of the Assistant Commissioner," is not sufficient evidence of the prisoner having duly deposed. *QUEEN v. MATI KHAWA*
[8 B. L. R., A. Cr., 36: 12 W. R., Cr., 31

12. ——— **Depositions of witnesses taken by Magistrate.—Evidence on appeal.**—Before depositions of witnesses taken before a Magistrate can be used on appeal, it should be shown either in the depositions or elsewhere that the evidence was read over or interpreted to the respective witnesses. *QUEEN v. PARBUTTY CHURN CHUOKERBUTTY*
[14 W. R., Cr., 13

13. ——— **Depositions in previous case.**—Previous statements of witnesses on oath are

EVIDENCE—CRIMINAL CASES—continued.**3. DEPOSITIONS—continued.****Depositions in previous case—continued.**

not available as evidence in a subsequent trial. *QUEEN v. KISTO MUNDUL* . . . 7 W. R., Cr., 8

14. ——— The deposition of a witness in a former case is not evidence in a subsequent case in which he is examined, except when put in to contradict him. *QUEEN v. NOBORISTO GHOSH* . . . 8 W. R., Cr., 87

15. ——— Evidence taken on the trial of one prisoner wrongly admitted as evidence on the trial of another. *QUEEN v. ZULFUKUR KHAN* . . . 8 B. L. R., Ap., 21
[16 W. R., Cr., 36

16. ——— The prisoners were convicted, under section 154 of the Penal Code, upon evidence taken in another case to which the prisoners were not parties. The conviction was set aside. *IN THE MATTER OF THE PETITION OF BETTS* . . . 6 B. L. R., Ap., 83
[15 W. R., Cr., 6

17. ——— **Absence of accused.**—The Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. *Held* that the depositions were illegally taken, and, therefore, could not sustain a charge. *QUEEN v. RAJKISHNA MITTER*
[1 B. L. R., O. Cr., 36

18. ——— In a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence the depositions of witnesses in certain cases in which the accused was tried on charges of being a member of an unlawful assembly and of rioting, and was acquitted. *Held* that the Assistant Magistrate ought not to have admitted this evidence. *QUEEN v. DINA BUNDHOO ROY* . . . 24 W. R., Cr., 4

19. ——— **Absence of accused.**—Where the evidence of witnesses taken in the absence of the prisoner at a former trial was read out to them, and put in on their assenting to it as a true record of the facts,—*Held* that the proceeding was irregular and prejudicial to the prisoner; that such witnesses should have been subjected to a fresh oral examination; and that then the former depositions might have been put in, not to add to their testimony but to corroborate it. A new trial was ordered. *QUEEN v. BISHONATH PAL* . . . 8 B. L. R., A. Cr., 20
[12 W. R., Cr., 3

20. ——— **Depositions not read over to accused.—Oral evidence.—Statement of mooktear as to faulty record.**—*Criminal Procedure Code (Act X of 1882), s. 360.—Evidence Act (I of 1872), s. 91.*—A Sessions Judge, after hearing a general statement made by a mooktear engaged in the case, considered that the depositions of certain witnesses taken in the Magistrate's Court did not conform with

EVIDENCE—CRIMINAL CASES—continued.**8. DEPOSITIONS—continued.****Depositions not read over to accused—continued.**

the requirements of section 360 of the Code of Criminal Procedure, and refused to admit the depositions as evidence, and also refused to allow oral evidence to be given as to the statements made by these witnesses. No objection was taken to the admission of these depositions on behalf of the Crown; the accused were eventually convicted and sentenced to rigorous imprisonment. *Held*, on appeal, that the conviction and sentence must be set aside. **ADYAN SING v. QUEEN-EMPRESS**. . . I. L. R., 13 Calo., 121

21. — Depositions taken by Collector.—The evidence of a prisoner taken by a Collector cannot be used against him on his trial before a Magistrate. **QUEEN v. SOOKMOY GHOSH**

[10 W. R., Cr., 23]

22. — Depositions before Magistrate.—*Criminal Procedure Code, 1861, s. 369.*—*Depositions of Goasha ladies.*—The depositions of Goasha ladies examined before the committing Magistrate in the presence of the accused are not admissible in evidence on the trial before the Sessions Court under section 369 of the Criminal Procedure Code, 1861. **ANONYMOUS**. . . 4 Mad., Ap., 15

23. — Discrepancies in depositions.—In a trial before a Sessions Court the attention of the jury may be called to the discrepancies between the evidence given by witnesses in such Court and that given before the committing Magistrate without the depositions before the Magistrate being put in. **EMPRESS v. HARAN CHUNDER MITTER**

[6 C. L. R., 390]

24. — Criminal Procedure Code, 1861, s. 369.—When a deposition is received in evidence under section 369, Code of Criminal Procedure, at a trial before a Sessions Judge, there ought to be on the record distinct proof of the existence of such a state of things as makes the deposition legal evidence. **QUEEN v. BHEKUN DOSS**

[7 W. R., Cr., 114]

25. — Depositions taken before Civil Court.—*Criminal Procedure Code, 1861, s. 369.*—*Evidence Act (II of 1855), s. 57.*—When a Civil Court, authorising a criminal prosecution in cases of offences against public justice, instead of completing the investigation itself, and committing the parties for trial before the Court of Session, simply refers the proceedings and leaves it to the Magistrate to commit or not, as he thinks proper, the depositions taken before the Civil Court are not admissible in evidence, as depositions taken before the Magistrate are in certain cases under section 369, Code of Criminal Procedure. But by section 57, Act II of 1855, the improper admission of such evidence is not of itself ground for the reversal of the Sessions Judge's sentence, when, independently of that evidence, there is sufficient evidence to justify the decision. **QUEEN v. NUJUM ALI**

[6 W. R., Cr., 41]

EVIDENCE—CRIMINAL CASES—continued.**3. DEPOSITIONS—continued.**

26. — Depositions taken on commission.—*Evidence Act, s. 33.*—*Evidence of witness taken upon commission when admissible in criminal trial.*—*High Courts' Criminal Procedure Act (X of 1875), s. 76.*—The evidence of a witness taken upon commission is not admissible in a criminal trial held before the High Court, unless it can be shown that such evidence was so taken upon an order made by that Court under section 76 of Act X of 1875, or unless it is admissible under section 33 of the Evidence Act. **EMPRESS v. DABEE PERSHAD**

[I. L. R., 6 Calo., 532]

27. — Depositions taken in absence of accused where he has absconded.—*Criminal Procedure Code, 1882, s. 512.*—Where an accused person has absconded, and it is intended to record evidence against him in his absence, it is requisite, under section 512 of the Code of Criminal Procedure, that the fact of the absconding of the accused should be alleged, tried, and established before the deposition is recorded. **GHUREN BIRD v. QUEEN-EMPRESS**. . . I. L. R., 10 Calo., 1097

28. — Deposition of absent witness.—*Act I of 1859, s. 111.*—The deposition of a person other than a merchant seaman is not admissible in evidence under section 111 of the Merchant Seaman's Act (I of 1859). **QUEEN v. RAMCOMAL MITTER**. . . 1 Hyde, 195

29. — Deposition of dead witness.—When it is proposed to read as evidence the deposition of a witness alleged to be dead, the death of the witness should first be strictly proved, unless it is admitted on the other side, and the reading of the deposition not objected to. **QUEEN v. GAGALU MOYALU**

[4 B. L. R., Ap., 50; 12 W. R., Cr., 80]

30. — Written reports of depositions.—*Criminal Procedure Code, 1861, s. 369.*—Written reports of depositions are not evidence, except in the case provided for by section 369 of the Code of Criminal Procedure, 1861. **QUEEN v. KALLY CHURN GANGGOOLY**. . . 6 W. R., Cr., 92

31. — Documents tendered in civil case.—*False evidence, Trial for giving.*—Documents which were tendered in the civil suit, if relied on in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be received as evidence. **QUEEN v. KARTICK CHUNDER HALDAR**. . . 9 W. R., Cr., 58

32. — Documents not on record before Sessions Judge.—Documents which were on the record sent up by the Magistrate, but which were not put in evidence before the Sessions Judge, looked at because they told in favour of the prisoner. **QUEEN v. SOOBHAN**. . . 10 B. L. R., 332

33. — Records of former trial.—*Depositions in former case.*—The power granted to the Civil Courts of calling for and inspecting the records of a previous trial is one that ought to be exer-

EVIDENCE—CRIMINAL CASES—continued.**3. DEPOSITIONS—continued.****Records of former trial—continued.**

cised with the greatest caution, and does not extend to criminal proceedings. **QUEEN v. JUMDEM SINGH** [12 W. R., Cr., 73]

34. — Depositions taken in former sessions case.—*Criminal Procedure Code, s. 512. — Act I of 1872, ss. 33, 157. — Witness, Threatening. — Duty of Magistrate.*—In 1874 five out of six persons who were named as having committed a murder were arrested, and after enquiry before a Magistrate were tried before the Court of Session and convicted. At the time of the enquiry before the Magistrate, the sixth accused person absconded, as was recorded by the Magistrate. In their examination before that officer the witnesses deposed to the absconder having been one of the participants in the crime charged against the prisoners then under trial. In the Sessions Court the Judge did not record that the sixth accused person had absconded, and the evidence was recorded against the prisoners then under trial only. In 1886 the absconder was apprehended and tried before the Court of Session upon the charge of murder. At that time most of the former witnesses were dead, and the Sessions Judge, referring to section 83 of the Evidence Act, admitted in evidence against the prisoner the depositions given in 1874 before both the Magistrate and the Sessions Court. He also admitted the deposition of a surviving witness which had been given in 1874 before the Sessions Court. This witness now also gave evidence against the prisoner. *Held* that the depositions were not admissible in evidence under section 83 of the Evidence Act, the prisoner not having been a party to the former proceedings and not having then had an opportunity of cross-examining the witnesses. *Held*, however, that under the circumstances, the depositions given in 1874 before the committing Magistrate, though not those given in the Court of Session, were admissible in evidence under section 512 of the Criminal Procedure Code. *Per* STRAIGHT, J., that under the special circumstances the deposition taken in 1874 of the surviving witness was admissible under section 157 of the Evidence Act as corroboration of her evidence given at the trial of the prisoner. **QUEEN-EMPRESS v. ISHRI SINGH** . I. L. R., 8 All., 672

4. DYING DECLARATIONS.

35. — Proof of state of deceased person.—*Mode of recording declaration.*—A dying declaration is admissible in evidence in all criminal cases, provided the conditions attaching to its admission have been fulfilled, and is not confined to cases in which the death of the injured party is the sole object of enquiry. There must be evidence of the state of the deceased person at the time of making the declaration. The Magistrate recording a dying declaration should put on record the answer of the declarant to a question touching his knowledge or belief in his approaching death. **QUEEN v. UJRAIL** [3 N. W., 212]

EVIDENCE—CRIMINAL CASES—continued.**4. DYING DECLARATIONS—continued.****Proof of state of deceased person—continued.**

36. — *Criminal Procedure Code, 1861, s. 371.*—In determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration under section 371, Code of Criminal Procedure, a Sessions Judge ought to direct his attention to the point whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot speak of their own personal knowledge to such declaration should not be admitted; and in deciding whether the accused is guilty of the charge of murdering the deceased declarant, the Court should confine itself to enquiring into the facts which occurred on the day of the murder. **QUEEN v. ZUHIR** [10 W. R., Cr., 11]

37. — *Procedure.*—Before a dying declaration can be received in evidence it must be distinctly found that the person who made the declaration knew or believed at the time he made it that he was dying or was likely to die. Where a Sessions Judge sees from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration, he should call for that evidence. A Magistrate should, in all cases in which dying declarations are made, examine the complainant on the point, and record the question as well as the answer to it upon the record of the examination. **IN THE MATTER OF TANGO**

[15 W. R., Cr., 11]

38. — Statement made by deceased.—*Evidence Act, s. 32, cl. 1.—Murder.*—In a case of murder the statement made by the deceased in the presence of his neighbours and of a head constable was admitted as relevant evidence under section 32, clause 1, Act I of 1872, that section providing that such statement is relevant whether the person who made the statement was or was not at the time when it was made under expectation of death. **QUEEN v. DEGUMBER THAKOOR**

[19 W. R., Cr., 44]

39. — Declaration made before Magistrate other than the committing Magistrate.—*Evidence of making of declaration.*—The declaration of a dying person, albeit made on solemn affirmation before a Magistrate, who was not however, the committing Magistrate, and signed by him, is not admissible in evidence without legal proof that the deceased made such a declaration. **REG. v. FATA ADAJI** . . . 11 Bom., 247

40. — Dying statement.—*Presence of accused.*—The dying statement of a deceased person must be taken in the presence of the accused; if not so taken, the writing cannot be admitted to prove the statement made. The statement may be proved in the ordinary way by a person who heard it, and the writing may be used for the purpose of refreshing the witness's memory. **IN THE MATTER OF THE PETITION OF SAMIRUDDIN. EMPRESS v. SAMIRUDDIN**

[I. L. R., 8 Cal., 211
10 C. L. R., 11]

EVIDENCE—CRIMINAL CASES—continued.**4. DYING DECLARATIONS—continued.**

41. ——— Statement of deceased as to cause of death.—*Evidence Act, s. 32.*—Where the accused was charged with culpable homicide not amounting to murder, the question was whether the deceased had died from the effects of a beating. *Held* that a statement by the deceased that he had been beaten by the accused was admissible in evidence under section 32 of the Evidence Act, without proof that at the time of making the statement the deceased was conscious of any fatal effect of such beating. **EMPERESS v. BLECHYDEN**

[6 C. L. R., 278]

42. ——— Cause of death signified in answer to question.—*Admissibility of evidence as to signs.*—*Evidence Act (I of 1872), s. 8, s. 8, expls. 1, 2, s. 9, and s. 32.*—“*Fact.*”—“*Conduct.*”—“*Verbal*” statement.—In a trial upon a charge of murder, it appeared that the deceased shortly before her death was questioned by various persons as to the circumstances in which the injuries had been inflicted on her, that she was at that time unable to speak, but was conscious and able to make signs. Evidence was offered by the prosecution, and admitted by the Sessions Judge, to prove the questions put to the deceased, and the signs made by her in answer to such questions. *Held* by the Full Bench (MAHMOOD, J., dissenting) that the questions and the signs taken together might properly be regarded as “verbal statements” made by a person as to the cause of her death within the meaning of section 32 of the Evidence Act, and were therefore admissible in evidence under that section. *Per* STRAIGHT, J., that statements by the witnesses as to their impressions of what the signs meant were inadmissible, and should be eliminated; but that assuming that the questions put to the deceased were responded to by her in such a manner as to leave no doubt in the mind of the Court as to her meaning, it was not straining the construction to hold that the circumstances were covered by section 32. *Per* MAHMOOD, J., that the expression “verbal statements” in section 32 should be confined to statements made by means of a word or words, and that the signs made by the deceased, not being verbal statements in this sense, were not admissible in evidence under that section. *Per* PETHERAM, C. J., that the signs could not be proved as “conduct” within the meaning of section 8 of the Evidence Act, inasmuch as, taken alone, and without reference to the questions leading to them, there was nothing to connect them with the cause of death, and so to make them relevant; while the questions could not be proved either under *Explanation 2* of section 8 or under section 9, inasmuch as the condition precedent to their admissibility under either of these provisions was the relevancy of the conduct which they were alleged to effect, or of the facts which they were intended to explain. The “conduct” made relevant by section 8 is conduct which is directly and immediately influenced by a fact in issue or relevant fact, and it does not include actions resulting from some intermediate cause, such as questions or suggestions by other persons. *Per* MAH-

EVIDENCE—CRIMINAL CASES—continued.**4. DYING DECLARATIONS—continued.**

Statement of deceased as to cause of death—continued.

MOOD, J., that the word “conduct” as used in section 8 does not mean only such conduct as is directly and immediately influenced by a fact in issue or relevant fact; that the signs made by the deceased were the conduct of “a person an offence against whom was the subject of any proceeding” and were relevant as such under section 8, and that the questions put to her were admissible in evidence either under *Explanation 2* of the same section, or under section 9, by way of an explanation of the meaning of the signs. **QUEEN-EMPERESS v. ABDULLA**

[I. L. R., 7 All, 385]

43. ——— Statement of deceased.—*Rape.*—The dying declaration of a deceased person is admissible in evidence on a charge of rape. **QUEEN v. BISSORUNJUN MOOKERJEE** . 6 W. R., Cr., 75

44. ——— Sessions Court, Record of.—The dying declaration of a deceased person is admissible, and should form part of the sessions record. **QUEEN v. SOYUMBER SINGH**

[9 W. R., Cr., 2]

IN THE MATTER OF THE PETITION OF CHINTA-MUNER NYE . . . 11 W. R., Cr., 2

5. EXAMINATION AND STATEMENTS OF ACCUSED.

45. ——— Statements made by accused person.—Statements of accused persons can only be used in evidence as against the parties making them, and cannot be used as corroborative evidence against others. **QUEEN v. HURGOBIND**

[2 N. W., 336]

QUEEN v. BUSSIRUDDI . 8 W. R., Cr., 35

46. ——— Statements of prisoners.—*Depositions before Magistrate.*—Bare statements of prisoners are not admissible in evidence; nor are depositions taken before the Magistrate unless to contradict the evidence of the same witnesses as given before the Sessions Court. **QUEEN v. BREKOO SINGH**

[7 W. R., Cr., 108]

47. ——— Confession of prisoner made to Magistrate or to private person.—A confession made to a Joint Magistrate of a district in charge of the sudder subdivision is receivable in evidence, although the Joint Magistrate may not have been specially empowered, under Act VIII of 1869, to receive the confessions of prisoners. A confession made to a private individual may be evidence against the prisoner if proved by the person before whom the confession was made. **QUEEN v. GOPKERNATH KOLLU** . 13 W. R., Cr., 69

48. ——— Admission by husband of having kicked his wife.—*Causing death.*—An admission by a husband in the presence of several witnesses that he had kicked his wife, and that she

EVIDENCE—CRIMINAL CASES—continued.**5. EXAMINATION AND STATEMENTS OF ACCUSED—continued.****Admission by husband of having kicked his wife—continued.**

died after receiving the kick, was held to be direct evidence against him. *QUEEN v. BYSAGOO NOSHYO* [8 W. R., Cr., 29]

49. ——— Statement under promise of pardon.—A statement made under promise of pardon is no evidence against a prisoner. *QUEEN v. RADHANATH DOSADH* . . . 8 W. R., Cr., 53

50. ——— Statement made by prisoner after acceptance of pardon.—*Subsequent retraction of statement.*—A person accused of an offence was offered a pardon the conditions of which he accepted. On being examined he stated in detail the circumstances of the offence, and named the prisoner as an accomplice. He afterwards retracted his statement. *Held* that the statement could not be used as evidence against the prisoner. *QUEEN v. HARDEWA* . . . 5 N. W., 217

51. ——— Examination of accused person.—Witness.—Criminal Procedure Code, s. 347.—It is not competent to a Magistrate to convert an accused person into a witness, except when a pardon has been lawfully granted under section 347 of the Code of Criminal Procedure. Evidence given by such a person who had received a pardon in the case of an offence not exclusively triable by the Court of Session, held not relevant, that person not having been acquitted or discharged or convicted. *QUEEN v. HANMANTA* [I. L. R., 1 Bom., 610]

52. ——— Statement of person to whom pardon has been wrongly tendered.—*Criminal Procedure Code, 1872, s. 347.*—Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons in offences none of which were exclusively triable by the Court of Session, and such person was examined as a witness in the case,—*Held* that the tender of pardon to such person not being warranted by section 347 of Act X of 1872, he could not legally be examined on oath, and his evidence was inadmissible. *EMPRESS v. ASHGAR ALI* . . . I. L. R., 2 All., 260

53. ——— Statement of prisoner after tender of pardon.—Evidence Act (I of 1872), s. 80.—A deposition given by a person is not admissible in evidence against him in a subsequent proceeding without its being first proved that he was the person who was examined and gave the deposition. A pardon was tendered to an accused, and his evidence was recorded by the Magistrate. Subsequently the pardon was revoked, and he was put on his trial before the Sessions Judge along with the other accused. At the trial the deposition given by him before the Magistrate was put in and used in evidence against him without any proof being given that he was the person who was examined as a witness before the Magistrate. *Held* that the deposition was

EVIDENCE—CRIMINAL CASES—continued.**5. EXAMINATION AND STATEMENTS OF ACCUSED—continued.****Statement of prisoner after tender of pardon—continued.**

inadmissible without proof being given as to the identity of the accused with the person who was examined as a witness before the Magistrate. *QUEEN-EMPRESS v. DURGA SONAR*

[I. L. R., 11 Calc., 580]

54. ——— Criminal Procedure Code, 1861, ss. 205, 211, and 366.—Where a person to whom a tender of conditional pardon has been extended is considered by the Sessions Judge not to have conformed to the conditions under which pardon was tendered, the Sessions Judge, in exercising the power given him by section 211 of the Code of Criminal Procedure, ought not to try him along with the prisoners in whose case he has already given testimony. *QUEEN v. PETUMBER DHOORER*

[14 W. R., Cr., 10]

55. ——— Statements of accused illegally pardoned.—In cases not of the kind contemplated in section 337 of the Criminal Procedure Code (X of 1882), it is not competent to a Magistrate holding a preliminary enquiry to tender a pardon to the accused, or to examine him as a witness. Statements made by the accused in the course of such examination are irrelevant. *QUEEN-EMPRESS v. DALA JIVA* . . . I. L. R., 10 Bom., 190

56. ——— Evidence of co-accused charged, but not arrested.—Admissibility of evidence.—A charge of theft having been laid against A. and B., process was issued against A. only, and upon his being put upon his trial, B., who had not been arrested, was produced as a witness for the defence. *Held* that his evidence was admissible. *Queen v. Ashruff Sheikh*, 6 W. R., Cr., 91; and *Reg. v. Hanmanta*, I. L. R., 1 Bom., 610, distinguished. *MOHESH CHUNDER KAPALI v. MOHESH CHUNDER DASS* . . . 10 C. L. R., 553

57. ——— Examination of accused person.—Mode of recording evidence.—The examination of an accused person should be taken down in the language in which it is delivered and as far as possible in the words used by him. *QUEEN v. MOONSAT BIBEN* . . . 24 W. R., Cr., 54

58. ——— Statement of accused before Magistrate.—Mode of recording evidence.—Criminal Procedure Code, 1872, s. 80.—The deposition of the prisoner given in Hindustani, but taken in English by the Magistrate, and the memorandum at the foot of the deposition that it was read to the witness and was by him acknowledged to be correct, though held not to be quite satisfactory (as the person who took down in English what the prisoner had said in Hindustani was not examined as a witness and the prisoner had no opportunity of cross-examining him), was admitted as a proper deposition within the provisions of the Criminal Procedure Code, and the memorandum was taken under section 80, Code

EVIDENCE—CRIMINAL CASES—continued.**5. EXAMINATION AND STATEMENTS OF ACCUSED—continued.****Statement of accused before Magistrate—continued.**

of Criminal Procedure, as evidence of the facts stated in it, and as affording some evidence that the translation was correct. *QUEEN v. GONOWRI*

[22 W. R., Cr., 2

59. ——— *Omission to make memorandum of evidence by Civil Court in case of perjury.*—The failure of the Civil Court in a case of perjury to make a memorandum of the evidence of the accused when examined before it, does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court. *IN THE MATTER OF BEHARY LALL BOSH*

[9 W. R., Cr., 69

60. ——— *Evidence Act, s. 91.—Criminal Procedure Code, 1872, s. 339.—Prosecution for false evidence.*—In a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated before him. The document was not interpreted to the accused in the language in which it was given, or which he understood; nor was it read over in accordance with the requirements of section 339, Code of Criminal Procedure, in the presence of the person then accused. *Held* that the English record of the Magistrate was not legal evidence under the Evidence Act, I of 1872, section 91, of what the prisoner said before the Magistrate. Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction. *QUEEN v. MUNGUL DASS*

23 W. R., Cr., 28

61. ——— *Statement of accused, informality in.—Evidence Act, s. 91.—False evidence in judicial proceedings.—Deposition of the accused when admissible as evidence.—Civil Procedure Code (Act X of 1877), ss. 178, 182, 183, and 647.*—Failure to comply with the provisions of sections 182 and 183 of Act X of 1877 (Civil Procedure Code) in a judicial proceeding, is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under section 91 of Act I of 1872 (Evidence Act), no other evidence of such deposition is admissible. *IN THE MATTER OF THE PETITION OF MAYADEB GOSSAMI. EMPRESS v. MAYADEB GOSSAMI*

[1 L. R., 6 Cal., 762: 8 C. L. R., 292

62. ——— *Examination of accused.—Criminal Procedure Code, 1861, ss. 205, 366.—Attestation of Magistrate.*—Before the examination of a prisoner in the presence of the committing officer can be used as evidence against him under section 366, Criminal Procedure Code, the provisions of section 205 of that Code must have been complied with, and the committing officer's attestation affixed in full to the examination. *QUEEN v. CHUPPUT KHYWAR*

[15 W. R., Cr., 83

EVIDENCE—CRIMINAL CASES—continued.**5. EXAMINATION AND STATEMENTS OF ACCUSED—continued.****Examination of accused—continued.**

63. ——— *Record of statements.*—When the examination of the prisoner by the Magistrate has not been recorded in full so as to include the questions as required by section 205 of the Code of Criminal Procedure, it cannot be given in evidence at the trial before the Court of Session, under section 366, without further proof. *REG. v. KALLA LAKHMAGI*

2 Bom., 419: 2nd Ed., 395

REG. v. PEVADI BIN BASAPPA

[2 Bom., 421: 2nd Ed., 397

REG. v. VITHOJI

[2 Bom., 422: 2nd Ed., 398

REG. v. GANU BAPU

[2 Bom., 422: 2nd Ed., 398

But see *EMPRESS v. SAGAMBUR*

[12 C. L. R., 120

64. ——— *Criminal Procedure Code, 1861, s. 205.*—Where a statement made by a prisoner before a Magistrate, though signed by the Magistrate, does not contain the certificate directed by section 205 of the Code of Criminal Procedure, it does not of itself constitute *prima facie* evidence of the examination within the meaning of section 366 of that Code; and if other proof is not given to show that the statement was made by the prisoner before the Magistrate, the statement is not admissible as evidence at the sessions. *QUEEN v. PETAMBUR DHOORRE*

[14 W. R., Cr., 10

65. ——— *Criminal Procedure Code (Act XXV of 1861), s. 205.*—A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it, as required by section 205 of the Code of Criminal Procedure. The Sessions Judge, therefore, refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate, and taking his evidence in the matter. *Held* that the examination of the prisoners was inadmissible in evidence. *QUEEN v. RADEH JANA*

[3 B. L. R., A. Cr., 59: 12 W. R., Cr., 44

66. ——— *Statement of prisoner on examination before Magistrate.—Criminal Procedure Code, 1861, s. 205.—Signature of Magistrate.*—To make the examination of an accused person before a Magistrate legal evidence in a Sessions Court, something more than the mere signature of the Magistrate thereto is necessary. The certificate under the Magistrate's hand (i.e., not necessarily in his writing but with his signature, *Queen v. Regga Hossein*, 8 W. R., Cr., 55), required by section 205 of the Criminal Procedure Code, must be attached. *QUEEN v. BHEERAKKE*

4 N. W., 16

See *QUEEN v. NIRUNI*

7 W. R., Cr., 49

and *QUEEN v. BHAKARR*

15 W. R., Cr., 63

EVIDENCE—CRIMINAL CASES—continued.**5. EXAMINATION AND STATEMENTS OF ACCUSED—continued.****Examination of accused—continued.**

67. ——— Attestation of Magistrate.—The attestation of the Magistrate is *prima facie* proof of such examination, and it is to be presumed the proceedings were regular. **QUEEN v. JAGA POLY** **11 W. R., Cr., 89**

S. C. QUEEN v. JOGE POLY

[**7 B. L. R., 67, note**

REG. v. TIMMI . **2 Bom., 181; 2nd Ed., 125**

68. ——— Attestation of Magistrate.—The attestation of a Magistrate stating why he could not proceed with the further examination of a witness is *prima facie* proof of the fact, and may be laid before a jury. **QUEEN v. RASOOKOOLAH** [**12 W. R., Cr., 51**

69. ——— Evidence in Sessions Court.—If the examination of an accused person taken before the Magistrate is afterwards read in evidence at the trial before the Sessions Court, the whole of it should be read out. **ANONYMOUS** **5 Mad., Ap., 4**

70. ——— Statement of prisoner before Magistrate.—Attestation of Magistrate.—It is not necessary for a Sessions Judge to read out to prisoners confessions made by them before a Magistrate, and ask them if they have any objection to the reception of these confessions. The examination of prisoners before a Magistrate is to be received in evidence, and the attestation of the Magistrate is *prima facie* proof of the circumstances. **QUEEN v. MISSER SHERIKH** . **14 W. R., Cr., 9**

6. GOVERNMENT GAZETTE.

71. ——— Gazette of India.—Calcutta Gazette.—Act II of 1855, ss. 6 and 8.—Official letters.—The *Gazette of India*, or *Calcutta Gazette*, containing official letters on the subject of hostilities between the British Crown and Mahomedan fanatics on the frontier, was rightly admitted in evidence under sections 6 and 8 of Act II of 1855, as proof of the commencement, continuation, and determination of hostilities. Similarly, under section 6, a printed letter from the Secretary to the Government of the Punjab to the Secretary to the Government of India, was properly resorted to by the Court for its aid as a document of reference. It was not necessary that these documents should be interpreted to the prisoner. It was sufficient that the purposes for which they were put in were explained. **QUEEN v. AMIRUDDIN** [**7 B. L. R., 68; 15 W. R., Cr., 25**

7. HANDWRITING.

72. ——— Handwriting, Knowledge of.—The knowledge by the Sessions Judge of the handwriting of the Judicial Officer before whom the statement was made is no evidence of the statement having been made before that officer. **QUEEN v. FATIK BISWAS** **1 B. L. R., A. Cr., 13**

EVIDENCE—CRIMINAL CASES—continued.**7. HANDWRITING—continued.****Handwriting, Knowledge of—continued.**

S. C. QUEEN v. FUTTALI BISWAS

[**10 W. R., Cr., 87**

73. ——— Handwriting, Proof of.—Statement by third party.—Memorandum.—*N.* was charged with having made a false statement before a Sub-Registrar in identifying *K.*, a person who had executed a mortgage-deed in favour of *E.*, and who was a neighbour of his (*N.'s*) as being the person to whom *E.* had agreed to advance the money, the consideration of the mortgage. The false statement consisted in his stating to the Sub-Registrar that he "knew *K.* as his neighbour." During the hearing of the case it was sought to prove a statement made by *E.* to a third party (*E.* having died previous to the institution of the case) to the effect that *N.* had told him certain facts. A memorandum, alleged to be in the handwriting of *N.*, was also tendered and received in evidence without any further proof as to its being in *N.'s* handwriting than that it bore a similarity to another piece of paper proved to bear his handwriting. Held that the statement made by *E.* to the third party was inadmissible and irrelevant, and that the memorandum was wrongly received in evidence. **NOBIN KRISHNA MOOKERJEE v. RASSICK LALL LAHA** **I. L. R., 10 Calc., 1047**

8. HEARSAY EVIDENCE.

74. ——— Hearsay evidence, Inadmissibility of.—The admission of hearsay evidence prohibited. **QUEEN v. KALLY CHURN GANGOOLY**

[**7 W. R., Cr., 2**

QUEEN v. PITAMBUR SIRDAR . **7 W. R., Cr., 25**

9. HUSBAND AND WIFE.

75. ——— Admissibility of wife's evidence for or against husband or person charged jointly with him.—Upon a criminal trial in the mofussil, the evidence of a wife was held to be admissible for or against her husband or persons charged jointly with him. **NORMAN, J.**, dissented. **QUEEN v. KHYROOLLA**

[**B. L. R., Sup. Vol., Ap., 11**
6 W. R., Cr., 21

REG. v. KADIR VALAD BALU . **7 Bom., Cr., 50**

10. ILLEGAL GRATIFICATION.

76. ——— Illegal gratification.—Evidence of person bribing.—The evidence of the person who bribes is admissible against the person bribed. **QUEEN v. ABHOY CHURN CHUCKERBUTTY**

[**3 W. R., 19**

77. ——— Receiving illegal gratification.—Penal Code (Act XLV of 1860), ss. 161, 165.—Evidence of subsequent but unconnected receipt, showing footing on which parties stood.—Evidence Act (I of 1873), ss. 5-13 and 14.—The accused was charged with having received illegal grati-

EVIDENCE—CRIMINAL CASES—continued.**10. ILLEGAL GRATIFICATION—continued.****Illegal gratification—continued.**

fication from *C. & Co.* on three specific occasions in 1876. In 1876, 1877, and 1878, *C. & Co.* were doing business as commissariat contractors, and the accused was the manager of the Commissariat Office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from *C. & Co.* in 1877 and 1878 was not admissible against him under sections 5 to 13 of the Evidence Act. *Held per GARTH, C. J. (MACLEAN, J., concurring), the evidence was not admissible under section 14. Per GARTH, C. J.*—Section 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling. *Per MITTAL, J.*—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under section 14, but they would not be relevant to establish the fact of payments in 1876. *EMPRESS v. VYAPOORY MOODELIAR* . . . I. L. R., 6 Cal., 655 [3 C. L. R., 197]

11. JUDGMENT IN CIVIL SUIT.

78. ———— Judgment in civil suit out of which criminal prosecution arises.—In a suit by *A.* against the obligors of a bond, the Court held, for the reasons stated in its judgment, that the signatures of the obligors were not genuine, and directed the prosecution of *A.* on a charge of forgery. On the trial of *A.* before a jury, this judgment of the Civil Court was put in evidence on behalf of the prosecution, and its contents commented on by the Sessions Judge in his charge to the jury. *Held* that this judgment had been illegally admitted. *GOGUN CHUNDER GHOSH v. EMPRESS*

[I. L. R., 6 Cal., 247: 7 C. L. R., 74]

12. LETTERS.

79. ———— Letters implicating prisoner found in his house.—Letters, &c., found in a man's house after his arrest are admissible in evidence, if their previous existence has been proved. *QUEEN v. AMIR KHAN* . . . 9 B. L. R., 36 [17 W. R., Cr., 15]

13. MEDICAL EVIDENCE.

80. ———— Examination of medical witness.—*Criminal Procedure Code, 1872, s. 323.*—*Per FIELD, J.*—Under the provisions of section 323 of the Code of Criminal Procedure, the examination of a medical witness taken and duly attested may be given in evidence in any criminal trial; but in order that such evidence may be admissible against any individual accused person, the examination must have been taken in the presence of the accused per-

EVIDENCE—CRIMINAL CASES—continued.**13. MEDICAL EVIDENCE—continued.****Examination of medical witness—continued.**

son. IN THE MATTER OF THE PETITION OF JHUBBOO MARTON. *EMPRESS v. JHUBBOO MARTON* [I. L. R., 8 Cal., 739: 12 C. L. R., 233]

81. ———— *Expert's opinion.*—*Report of post-mortem examination.*—The evidence of a medical man who has seen and has made a post-mortem examination of the corpse of the person touching whose death the enquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and, secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. A medical man in giving evidence may refresh his memory by referring to a report which he has made of his post-mortem examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom. *RAJHUNI SINGH v. EMPRESS*

[I. L. R., 9 Cal., 455: 11 C. L. R., 569]

82. ———— *Report of subordinate medical officer.*—*Concurrence of superior officer.*—The substance of a report from a subordinate medical officer, with an expression of concurrence by his superior, cannot be read in evidence under section 363 of the Code of Criminal Procedure. IN THE MATTER OF THE PETITION OF CHINTAMONES NYE

[11 W. R., Cr., 2]

83. ———— *Letter from medical officer.*—*Letter expressing opinion.*—A letter of a medical officer expressing an opinion is not evidence under sections 368 and 370 of the Code of Criminal Procedure. *QUEEN v. KAMINER DOSSEN*

[12 W. R., Cr., 25]

14. NATIVE SEALS.

84. ———— *Comparison of native seals.*—*Evidence Act, 1855, s. 43.*—Section 43, Act II of 1855, is applicable to criminal trials. The test of comparison of native seals is at best but a fallible one, and must always be received with extreme caution. *QUEEN v. AMANMOOLAH MOLLAH*

[6 W. R., Cr., 5]

15. NOTES OF ENQUIRY.

85. ———— *Notes on enquiry by registering officer.*—The notes of an enquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion. *QUEEN v. PUERNANUND BARIK* . 11 W. R., Cr., 13

16. POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS.

86. ———— *Evidence of police officer.*—*Act II of 1855, s. 31.*—The practice of not

EVIDENCE—CRIMINAL CASES—continued.**16. POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS—continued.****Evidence of police officer—continued.**

examining a police officer who investigates a case condemned. The statements made to him might be proved by him in the witness-box, and would be admissible to corroborate the evidence of other witnesses on the same point given in Court before the Magistrate and Sessions Judge under section 31, Act II of 1855. *QUEEN v. AHMED ALLY*

[11 W. R., Cr., 25]

87. ——— **Statement of constable of police.**—Where the accused was charged with attempting to murder her child, the chief constable's statement (he having gone to search the house of the accused) that he "had information that the accused was about to kill the child," was most improperly admitted as evidence against the accused. *REG. v. CHIMA*

8 Bom., Cr., 164

88. ——— **Police diaries.**—*Corroborative evidence.*—Under section 154, Code of Criminal Procedure, police diaries cannot be admitted as corroborative evidence. *QUEEN v. THAKOOR CHUND SURMA*

[13 W. R., Cr., 22]

89. ——— **Police diaries.**—*Corroborative evidence.*—Police diaries cannot be legally used as substantive evidence, or read to the jury. *QUEEN v. HURDUT SURMA*

8 W. R., Cr., 68

90. ——— **Use of portion of diary.**—*Criminal Procedure Code, 1861, s. 154.*—Where certain portions of a police officer's diary are used as evidence against him, section 154 of the Code of Criminal Procedure does not bar the admission of other portions of the diary, as explaining the portions so used. *QUEEN v. NOBOKRISTO GHOSH*

[8 W. R., Cr., 87]

91. ——— **Police papers.**—*Judicial notice.*—Police papers ought not to be taken judicial notice of as evidence, nor consulted in order to test evidence. *QUEEN v. BUSSIRUDDY*

[8 W. R., Cr., 35]

92. ——— **Police reports.**—Police reports are not evidence, except against the reporting police officer. *GOVERNMENT v. MUDUN DASS*

[6 W. R., Cr., 52]

93. ——— **Statements not made in Court.**—*Evidence Act, II of 1855, s. 31.*—It is not competent to a Court of Sessions to inspect an original report from the office of the Superintendent of Police, and to make it evidence against the prisoners. Statements made otherwise than before the Court, and officers specified in section 31, Act II of 1855, may be given in corroboration of testimony; but such statements must be regularly proved by the person who received them, or by some one who heard them given. *QUEEN v. BISSEN NATH*

[7 W. R., Cr., 31]

EVIDENCE—CRIMINAL CASES—continued.**16. POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS—continued.****Police reports—continued.**

94. ——— **Breach of the peace, Likelihood of.**—*Report of police officer.*—The report made by a police officer that there is a likelihood of there being a breach of the peace is not legal evidence to prove the existence of any dispute likely to cause a breach of the peace. *ABHAYA CHOWDHRY v. BEAN*

[6 B. L. R., Ap., 148: 15 W. R., Cr., 42]

QUEEN v. BRYRO DAYAL SINGH

[3 B. L. R., A. Cr., 4: 11 W. R., Cr., 46]

IN THE MATTER OF BHADRESWARI CHOWDHURANI

[7 B. L. R., 329]

IN THE MATTER OF THE PETITION OF SHAMA-SANKAR MAZUMDAR . 9 B. L. R., Ap., 45

S. C. SHAMASANKAR MOZOOMDAR v. ANNUND-MOYNE DOSSYA . 18 W. R., Cr., 64

17. PREVIOUS CONVICTIONS.

95. ——— **Previous convictions.**—*Admissibility of evidence.*—Previous convictions are not admissible in evidence. *QUEEN v. THAKOORDASS CHOOTUR*

7 W. R., Cr., 7

QUEEN v. PHOOLCHAND alias PHOOLAL AHTE

[8 W. R., Cr., 11]

96. ——— **Determination of amount of punishment.**—Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged. *ROSEHUN DOOSADH v. EMPRESS*

[1 L. R., 5 Cal., 768: 6 C. L. R., 219]

97. ——— **Report from Record Office.**—A kaifut, or report from the Record Office, that A. had been convicted of a crime, is no evidence of a previous conviction. *QUEEN v. RAMZAN*

[6 B. L. R., Ap., 15: 15 W. R., Cr., 53]

QUEEN v. NUZEN NUSHYO . 15 W. R., Cr., 52**18. PROCEEDINGS OF CRIMINAL COURT.**

98. **Proceedings in criminal trial and proof of.**—The proceedings in a criminal trial, when necessary to be proved, should be proved by their production. *REG. v. RAVJI VALAD TAJU*

[8 Bom., Cr., 37]

19. STATEMENTS TO POLICE OFFICERS.

See CASES UNDER CONFESSION—CONFESSIONS TO POLICE OFFICERS.

99. ——— **Admission to police of floor.**—Admissions made by prisoners to police officers while in their custody are not admissible in evidence. *QUEEN v. BUSHMO ANENT*

[3 W. R., Cr., 21]

EVIDENCE—CRIMINAL CASES—continued.**19. STATEMENTS TO POLICE OFFICERS—continued.**

100. — Statement extorted by police officer by inducement.—A police officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession. No part of his evidence as to the discovery of facts in consequence of such confession is legally admissible. *QUEEN v. DHURUM DUTT OJHA* [8 W. R., Cr., 13]

101. — Statement obtained by persuasion and promise of immunity.—*Criminal Procedure Code, 1861, s. 146.*—An admission obtained from a prisoner by persuasion and promises of immunity by the police ought not to be received in evidence, as being in direct contravention of section 146, Code of Criminal procedure. The deposition of the police officer, moreover, should be taken before the admission can at all be used against the prisoner, under section 150, Code of Criminal Procedure. *QUEEN v. BISHOO MANJEE* . 9 W. R., Cr., 16

102. — Answers given by prisoner to police constables or Magistrate.—*G. D.* presented a Government promissory note at the Bank of Bengal bearing a forged endorsement, and was arrested. A police constable asked *N.* if he knew *G. D.* *N.* replied that he knew him as a common man. The police constable then asked *N.* if he knew anything about the note. *N.* replied that he did not. No threat or inducement was held out, nor was any caution administered to *N.* Held that the statements made by *N.* in answer to the questions of the police constable were admissible. *N.* was afterwards brought before *E.*, the Deputy Magistrate of Serampore, who told him, before any depositions were taken, that he (*N.*) was charged with having received a stolen promissory note, and *E.* asked him if he wished to say anything. *N.* replying in the affirmative, *E.*, without administering any caution to him, asked him how or where he had obtained the note, and other questions, the answers to which were taken down. *N.* was again brought up before *E.*, and was asked whether a promissory note then produced was the one he had delivered to *G. D.* to take to the Bank. *E.* told *N.* that he was not bound to answer the question, but if he did, the answer would be taken down, and that if he objected to answer, that would also be noted. *E.* committed *N.* to take his trial before the High Court. Held that, on the trial, the answer of *N.* to the questions of *E.*, whether *E.* acted as a Justice of the Peace for Bengal or as a Magistrate, were admissible. *QUEEN v. NABADWIP GOSWAMI* [1 B. L. R., O. Cr., 15: 15 W. R., Cr., 71, note

103. — Statement made to Magistrate by party in custody.—A statement which a man in the custody of the police volunteers to one in the position of a Magistrate can be used as evidence against the man who makes it. *QUEEN v. MON MOHUN ROY* . 24 W. R., Cr., 33

104. — Statements to police officer.—*Evidence Act, s. 27.*—*Theft of jewels from*

EVIDENCE—CRIMINAL CASES—continued.**19. STATEMENTS TO POLICE OFFICERS—continued.****Statements to police officer—continued.**

murdered woman.—The accused, charged with the murder of a woman, made a confession to a police inspector, part of which related to the concealment of certain jewels which belonged to the deceased woman, and in consequence of the information so received the jewels were discovered. Held that, under section 27 of the Evidence Act, that part of the accused's confession which described his assault on the deceased and her consequent death, and the way in which he became possessed of the jewels, related distinctly to the fact of the discovery of the ornaments, and might be proved against the accused. *QUEEN v. PAGAREN SHAHA* . 19 W. R., Cr., 51

105. — Written record of statement.—*Criminal Procedure Code, 1872, s. 119.*—*Inadmissibility of written evidence.*—*Oral evidence.*—Where the accused was charged under section 193 of the Penal Code with having given false evidence, in that he denied having made certain statements which he was alleged to have made to the inspector of police, that officer was examined and merely put in two documents containing the statements alleged as the records of what had taken place. Held that these documents being inadmissible in evidence under section 119 of the Code of Criminal Procedure, evidence ought to have been given as to what was actually stated by the accused to the inspector of police. *IN THE MATTER OF DABU* [6 C. L. R., 47]

106. — *Criminal Procedure Code, s. 119.*—*Evidence Act, 1872, ss. 91-155, 159.*—Section 119 of the Code of Criminal Procedure not making it obligatory upon a police officer to reduce to writing any statements made to him during an investigation, neither that section, nor section 91 of the Evidence Act, renders oral evidence of such statements inadmissible. If the statements be actually reduced to writing, the writing itself cannot be treated as part of the record or used as evidence, but may be used for the purpose of refreshing memory under section 159 of the Evidence Act. Consequently the person making the statements may properly be questioned about them; and, with a view to impeach his credit, the police officer himself, or any other person in whose hearing the statements were made, can be examined on the point under section 155 of the Evidence Act. *REG. v. UTTAMCHAND KAPURCHAND* [11 Bom., 120]

107. — Statements made by prisoners during police custody.—*Evidence Act, s. 27.*—Under section 27 of the Evidence Act, not every statement made by a person accused of any offence while in the custody of a police officer, connected with the production or finding of property, is admissible. Those statements only which lead immediately to the discovery of property, and, in so far as they do lead to such discovery, are properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the

EVIDENCE—CRIMINAL CASES—continued.**19. STATEMENTS TO POLICE OFFICERS—continued.****Statements made by prisoners during police custody—continued.**

case, and the connection between it and the statements made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and thus mediately, but not necessarily or directly, connected with the fact discovered, are not admissible. That a witness says that a plan was prepared in his presence is not a sufficient reason for admitting the plan in evidence, unless the witness also says that to his own knowledge the plan is correct. *REG. v. JORA HASTI*

[11 Bom., 242]

108. — Statement as to ownership of property.—Evidence of ownership.—Criminal Procedure Code (Act X of 1882), ss. 517 and 523.—Confession made to police officer, Admissibility of, for other purposes than as a confession.—Statements made to the police by accused persons as to the ownership of property which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an enquiry held by the Magistrate under section 523 of the Criminal Procedure Code (X of 1882). *QUEEN-EMPRESS v. TRIBHOVAN MANEKCHAND* . . . I. L. R., 9 Bom., 181

109. — Admission of guilty knowledge.—Criminal Procedure Code, 1861, s. 150.—Dacoity.—To make an admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence under section 150 of the Code of Criminal Procedure, it must be shown that the admission was antecedent to the discovery of the money. *QUEEN v. KAMAL FUKER* [17 W. R., Cr., 50]

110. — Statement of accused overheard by police officer.—The evidence of a policeman who overheard a prisoner's statement made in another room, and in ignorance of the policeman's vicinity and uninfluenced by it, is not legally inadmissible. *QUEEN v. SAGERNA*

[7 W. R., Cr., 56]

20. STOLEN PROPERTY.

111. — Evidence of possession of stolen articles.—Non-production of, for recognition by witness.—Recognition of things not before the eyes of deposing witnesses is not evidence against a person accused of having been in possession of those things. *QUEEN v. JOOMNEE* . 8 W. R., Cr., 16

21. TEXT BOOKS.

112. — Text books, Reference to.—Work on medical jurisprudence.—A well-known

EVIDENCE—CRIMINAL CASES—continued.**21. TEXT BOOKS—continued.****Text books, Reference to—continued.**

treatise such as Taylor's Medical Jurisprudence may be referred to in the course of a trial. *HATIM v. EMPRESS*, 12 C. L. R., 86, followed. *HURRY CHURN CHUCKERBUTTY v. EMPRESS*

[I. L. R., 10 Cal., 140]

113. — Evidence Act, ss. 57 and 60.—Reference to work on medical jurisprudence.—Under the provisions of the penultimate paragraph of section 57 and of the first proviso of section 60 of the Evidence Act, the Court referred to Taylor's Medical Jurisprudence with reference to the effect likely to be caused by a sudden blow on the abdomen. *HATIM v. EMPRESS* . 12 C. L. R., 86

EVIDENCE—PAROL EVIDENCE.

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| | Col. |
| 1. VALUE OF, IN VARIOUS CASES | 1810 |
| 2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTIONS OF PARTIES. | 1812 |
| 3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS | 1816 |

See ACCOUNT, ADJUSTMENT OF—

[B. L. R., Sup. Vol., 8]

See REGISTRATION ACT, 1877, s. 49.

[I. L. R., 1 All., 442]

I. B. L. R., A. C., 87

I. L. R., 6 Mad., 117

I. L. R., 7 Mad., 226

I. L. R., 9 Mad., 142

1. VALUE OF, IN VARIOUS CASES.

1. — Proof of fact or title.—Oral testimony, if worthy of credit, is sufficient, without documentary evidence, to prove a fact or a title. *RAM SOONDUR MUNDUL v. AKIMA BIBEE*

[8 W. R., 366]

SURUT SOONDUR DEBIA v. RAJENDUR KISHORE ROY CHOWDHEE . 9 W. R., 125

GOLUCK KISHORE ACHAREE CHOWDHEE v. NUND MOHUN DEY SINGAR . 12 W. R., 394

GIRDHARE LALL SINGH v. MODHOO ROY . 13 W. R., 323

DINDOO SINGH v. DOORGA PRERHAD [13 W. R., 348]

2. — Evidence of possession.—In a suit brought on an allegation of forcible dispossession, oral evidence, if credible and pertinent, is sufficient to establish the fact of possession. *SHEO SUHAYE ROY v. GOODUR ROY* . 8 W. R., 323

DINDOBUNDHOO SUHAYE v. FURLONG [9 W. R., 155]

3. — Documentary evidence.—Mere oral testimony was under the particular circumstances held to be insufficient to prove possession of land without any of the documentary

EVIDENCE—PAROL EVIDENCE—continued.**1. VALUE OF, IN VARIOUS CASES—continued.****Evidence of possession—continued.**

evidence (leases, agreements, collection papers, &c.) which is the invariable concomitant of actual possession in this country. **THAKOOR DEEN TEWARRE v. ALI HOSSEIN KHAN**

[8 W. R., 341: S. C. on appeal, 13 B. L. R., 427: 21 W. R., 340: L. R., 1 I. A., 192]

4. ——— Boundary dispute.—In a boundary dispute, oral evidence is quite insufficient to establish either the fact of possession or of title. **GOLUCK CHUNDER BOSE v. SHEEMURD RAJESHWREE BIDDIADEUR SOONDEAH NUREENDUR**

[W. R., 1864, 135]

5. ——— Proof of prescriptive title.—Oral evidence, if credible, is legally sufficient to prove a prescriptive title. **MEHARBAN KHAN v. MUHBOOB KHAN**

7 W. R., 462

6. ——— Suit for purchase-money.—*Apportionment of money.*—In a suit for purchase-money, oral evidence is admissible to show how the purchase-money has been apportioned. **DHOOKA THAKOOR v. RAM LALL SAHNI**

7 W. R., 408

7. ——— Guarantee.—There may be cases in which the Courts would accept and act upon parol evidence of the existence of a guarantee and its amount, but such parol evidence must be beyond suspicion. **LEKHRAJ v. PALER RAM**

2 N. W., 210

8. ——— Pedigree, Question of.—*Proof of native pedigree.*—In proving a native pedigree, the oral statements of deceased relatives will be admitted in the absence of any registers of births and deaths. **MOHEDREN AHMED KHAN v. MAHOMED**

[1 Ind. Jur., O. S., 132
S. C. 1 Mad., 92]

9. ——— Adjustment of account.—An adjustment of accounts may be proved by oral evidence. **KAMPILIKARIBASANAPPA v. SOMA SAMUDIRAM**

1 Mad., 183

10. ——— Evidence of payment of debt on bond.—Payment of a debt due on a samadukut may be proved by oral evidence alone. **GUMMAN GALUBHAI v. SORABJI BARJORJI**

1 Bom., 11

11. ——— Evidence of discharge of written obligation.—Oral evidence of the discharge of an obligation executed by writing is admissible. **RAMANADAMISARAIYAR v. RAMABHATTAR**

[2 Mad., 412]

12. ——— Repayment of mortgage debt.—*Verbal agreement to repay in bond.*—Held that though there may be a condition for repayment of a mortgage-debt in money, the mortgagee may bind himself to receive the payment in money's worth, and this orally, notwithstanding that the mortgage-debt is created by a written obligation. The mode in which an obligation may be discharged and satisfied by payment is a distinct matter from the obligation itself. **DURYA v. MOHUR SINGH**

2 Agra, 163

EVIDENCE—PAROL EVIDENCE—continued.**1. VALUE OF, IN VARIOUS CASES—continued.**

13. ——— Proof of payment.—*When payments are to be endorsed.*—A stipulation in a document that no other payments except payments endorsed on the document itself shall be admitted, does not exclude proofs of payment by other evidence. **SASHACHELLUM CHETTY v. GOBINDAPPA**

[5 Mad., 451]

NUGUR MULL v. AZEEMOOLLAH

[1 N. W., 146: Ed. 1873, 238]

14. ——— Evidence Act, s. 92.—*Contemporaneous oral agreement.*—*Bond payable by instalments.*—In a suit upon a kistibundi bond the defendants pleaded that the debt had been liquidated from the usufruct of certain property, which, by an oral agreement entered into at the time of the execution of the bond, had been assigned by them to the plaintiffs for that purpose. The assignment having been proved, the Court of first instance without further enquiry dismissed the plaintiffs' suit. The District Judge, however, reversed the order of that Court, on the ground that under section 92, Act I of 1872, evidence of the alleged oral agreement was inadmissible, it being a contemporaneous agreement, varying and to some extent contradicting the terms of the kistibundi bond. On appeal it was held that the allegation of the defendants amounted merely to a plea of payment, and that section 92 of the Evidence Act was not a bar to an enquiry as to the foundation of such a plea, and the case was accordingly remanded for an enquiry to be made as to whether the whole or any portion of the kistibundi money had been liquidated from the profits of the land assigned. **GOVINDO PROSAD ROY CHOWDHRY v. ANUND CHUNDER CHOWDHRY**

4 C. L. R., 274

2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES.

15. ——— Proof of existence of mortgage.—Where a question arises (not between mortgagor and mortgagee) as to the previous existence or non-existence of a particular mortgage, the oral evidence of the mortgagee that it did exist will be sufficient to prove the fact, without the production of the mortgage deed. **AMJAD ALI v. MONIRAM KOLITA**

[1 L. R., 12 Calc., 52]

16. ——— Evidence that bond was executed in different capacity from what appears.—It is competent to a party to show that a bond executed in favour of A. was really in favour of B., and that A. was a party to it merely in the capacity of gomastah of B. **SUROODERA v. RAM RUTTON TEWARRE**

Marsh., 3: 1 Hay, 24

17. ——— Benami purchase.—*Hindus.*—As between Hindus oral evidence is admissible to show that land nominally purchased for A. and conveyed to him by an instrument in writing was really purchased for A., B., and C. **PALANYAPPA CHETTY v. ARUMUGAM CHETTY**

2 Mad., 26

EVIDENCE—PAROL EVIDENCE—continued.**2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—continued.**

18. ——— Explaining use of benami name.—Parol evidence is admissible to show that the name of the party used in a deed was only benami for another person. *TARA MONEE DEBIA v. SHIB-NATH TULAPATTUR* . . . 6 W. R., 181

19. ——— Explaining terms of document.—Oral evidence may be admitted to explain a document, but not to vary the terms thereof when such terms are in themselves clear and undoubted. *RAMBUDDUN SINGH v. SREE KOONWAR*

[W. R., 1864, Act X, 22

CHUNDER NATH DEB v. GANGA GOBINDO SINGH ROY . . . 1 W. R., 84

MOHUN LALL ROY v. UNNOPOORNA DASSEE [9 W. R., 508

20. ——— Patent ambiguity.—*Intention of parties.*—Extrinsic evidence may be received to identify the thing referred to in a written agreement. Where there is a written agreement to deliver a quantity of grain (gulla) at a particular time, parol evidence is admissible under certain limitations to show what kind of grain the contracting parties had in their contemplation at the time the contract was made. *VALLA BIN HATAJI v. SIDOJI BIN KONDARI* [5 Bom., A. C., 87

21. ——— Latent ambiguity.—*Altering written contract.*—Extrinsic evidence is not admissible to alter a written contract, or to show that its meaning is different from what its words import; where there is a latent ambiguity in the wording, parol evidence is admissible to explain it. *RAM LOCHUN SHAHA v. UNNOPOORNA DASSEE* [7 W. R., 144

22. ——— Evidence to explain deed.—*Intention of parties.*—Parol evidence was held admissible to explain a deed, *e.g.*, to prove that a village not included in a putni lease was intended by the parties to be included in it. *DHUNPUT SINGH DOOGUR v. JOWAHUR ALI* . . . 8 W. R., 152

23. ——— Admissibility of evidence to identify land as that mentioned in document.—In a suit for redemption of land mortgaged to the defendant, the plaintiffs relied upon a document as containing an acknowledgment of the title of the plaintiff under section 15 of the Act of Limitation (XIV of 1859). The document contained an admission by the defendant that he held land upon mortgage in a specified district from the temple of which plaintiffs were the trustees. *Held* that oral evidence was admissible to apply the document to the land to which it was intended to refer. *VALAMPUDUCHERERI PADMANABHAN v. CHOWAKAREN PUDIAPURAYIL KUNHI KOLENDAN* . . . 5 Mad., 320

24. ——— Evidence to identify land mortgaged.—*Evidence Act, s. 92, cl. 6, and s. 95.*—The obligors of a bond for the payment of money, describing themselves as “sons of R., zemindar and

EVIDENCE—PAROL EVIDENCE—continued.**2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—continued.**

Evidence to identify land mortgaged—continued.

pattidar, resident of mauza S.,” hypothecated as collateral security for such payment “their one biswa five biswansi share.” *Held*, in a suit on the bond to enforce a charge on the one biswa five biswansi share of the obligors in mauza S., that, under proviso 6, section 92, and section 95 of Act I of 1872, evidence might be given to show that the obligors hypothecated by the bond their share in mauza S. *RAM LAL v. HARRISON* . . . I. L. R., 2 All, 332

25. ——— Evidence to explain clause in document.—*Evidence Act, s. 92.—Specific Relief Act, ss. 17, 22, and 26.*—The plaintiffs sued for specific performance of an agreement in writing which set forth, *inter alia*, that the defendants had agreed to sell, &c., under “certain conditions as agreed upon.” The defendants alleged that the written agreement did not contain the whole of the agreement between the parties, and offered parol evidence in support of their contention. *Held* (reversing the judgment of *WILSON, J.*), that the parol evidence was admissible to show what was meant by the clause “certain conditions as agreed upon.” *Per PONTIFEX, J. (GARRETH, C. J., dissenting).*—The evidence was admissible under proviso 1, section 92 of the Evidence Act (I of 1872). Discussion as to the meaning of section 92 of the Evidence Act, and of sections 17, 22, and 26 of the Specific Relief Act. *CUTTS v. BROWN* . I. L. R., 6 Calo., 328; 7 C. L. R., 171

26. ——— Evidence to explain identity of persons.—*Evidence to specify debt.*—*Suit on promissory note.*—A suit was brought on a promissory note by which the defendant promised to pay to the plaintiff Rs. 1,000 with interest. The defendant afterwards wrote the following letter to W.: “I further hold myself responsible to you for the two sums of Rs. 1,000 and Rs. 900 respectively, the latter sum bearing interest at 24 per cent. per annum. Both these sums of Rs. 1,000 and Rs. 900 I engage to pay you.” *Held* that parol evidence was admissible to show that, though the letter was addressed to W., the plaintiff S. was the person referred to as W., and that the letter was given to her. Parol evidence was also admissible to show what debt was referred to in the acknowledgment, and that it related to the promissory note. *UMESH CHANDRA MOOKERJEE v. SAGEMAN* [5 B. L. R., 632, note

S. C. *UMESH CHANDRA MOOKERJEE v. SAGEMAN* [12 W. R., O. C., 2

27. ——— Evidence to supply words in deed partially destroyed by insects.—The lower Court received parol evidence to supply words in an old deed, lost in consequence of the parts on which they were written having been eaten by insects. *Held* that the parol evidence was properly admitted. *BENODHAR LALL ROY v. DULLOO SINGH* [Marsh., 620

EVIDENCE—PAROL EVIDENCE—continued.**2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—continued.****28. ——— Ambiguity in document.**

Ancient document.—Evidence of acts of author.—Where a document is an ancient one and its meaning doubtful, the rule applies that "the acts of its author may be given in evidence in aid of its construction." Rule applied to the table of fees in the Records' Courts previous to the institution of Small Cause Courts in the Presidency towns; the words "debt levied by execution" used therein being ambiguous with respect to the Sheriff's right to poundage.

VINAYAK VASUDEV v. RITOHIE, STEWART & Co.
[4 Bom., O. C., 189

29. ——— Evidence to explain circumstances connected with transaction.—*Conduct of parties.—Value of property.*—Parol evidence is admissible to prove the conduct of the parties, the value of the property, and other circumstances connected with the transaction between the parties to the written contract. PHOLOO MONNE DOSSIA v. GRESH CHUNDER BRUTTACHARJEE

[8 W. R., 515

30. ——— Intention of parties.—Construction of document.—The Courts, in order to ascertain the intention of the parties, must look to the writing alone, and not to the statement of the parties themselves or their witnesses. ODIT NARAIN v. MAHESHW BUX SINGH

[Agra, F. B., 52: Ed. 1874, 39

31. ——— Contract not containing whole agreement.—The rule that verbal evidence is not admissible to vary or alter the terms of a written contract, is not applicable where the parties did not intend that the writing should contain the whole agreement between them; and this may appear either by direct evidence or by informality in the writing. BEHAREE LALL DRY v. KAMINEE SOONDURIE

14 W. R., 319

32. ——— Explanation of written agreement by parol evidence.—In resisting specific performance of an agreement it is competent to the defendant to show by oral evidence that the real intention of the parties to the agreement has not been correctly expressed in the written document. VISHVANATH ATMARAM v. BAPU NARAYAN

[1 Bom., 262

33. ——— Execution of deed.—Per PEACOCK, C. J., BAYLEY and CAMPBELL, JJ.—Verbal evidence is not admissible to vary or alter the terms of a written contract where there is no fraud or mistake, and in which the parties intend to express in writing what their words import. The parties cannot show by mere verbal evidence that, at the time of the agreement, what they expressed by their words to be an actual sale was intended by them to be a mortgage only. It is, however, material to enquire whether, having regard to the acts and conduct of the parties and having reference to the amount of the alleged purchase-money and the

EVIDENCE—PAROL EVIDENCE—continued.**2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—continued.****Intention of parties—continued.**

real value of the interest to be sold, the parties intended the writing to operate as an absolute sale, and treated the transaction as such, or as a mortgage only. Per NORMAN and PUNDIT, JJ.—Parol evidence is admissible to show that a bill of sale, though absolute in its terms, was a mortgage. KASHI NATH CHATTERJEE v. CHANDI CHARAN BANERJEE

[B. L. R., Sup. Vol., 383: 5 W. R., 68

RAMDEE KOONWARIE v. SHIB DYAL SINGH

[7 W. R., 334

34. ——— Mortgage.—Absolute sale, Deed of.—A., by a deed purporting to be a deed of absolute sale, conveyed certain property to B. The deed was registered. C. claimed a right of pre-emption. Held per PEACOCK, C. J., BAYLEY and CAMPBELL, JJ. (NORMAN and PUNDIT, JJ., dissenting), that the acts of the original parties or their statements could be admitted as against a third party to prove that their intention was different from that which their written deed expressed and was intended by them to express. MALUK CHAND SURMA v. KARLU CHANDEA SURMA

[B. L. R., Sup. Vol., 399: 5 W. R., 76

35. ——— Deed, Delivery of.—*Escrow.*—Where a deed is delivered to the party in whose favour it is executed, evidence is not admissible to show that it was intended to operate as an escrow only. MOHSUM ALLY v. BALASOO KOBE

[2 Hay, 576

36. ——— Purchase under joint deed.—Agreement as to division.—Where the plaintiff and defendants purchased property by a joint deed,—Held that parol evidence was admissible to show the terms on which they agreed amongst themselves to purchase it, and also as to the mode in which the land so purchased was to be divided. RAM GUTTER v. ISRAHIM ISMAILJEE SENDAT

[7 W. R., 353

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

37. ——— Evidence to vary deed.—Evidence of conduct of parties.—Oral stipulation at variance with a written document.—Evidence Act (I of 1872), s. 92.—Evidence cannot be admitted to prove a contemporaneous oral stipulation varying, adding to, or subtracting from, the terms of a written contract. Evidence of the acts and conduct of the parties to a written contract is not admissible if tendered solely in support of an oral stipulation varying its terms. DAIMODDRE PAIK v. KAIM TABIDAR

[I. L. R., 5 Cal., 300: 4 C. L. R., 419

38. ——— Parol evidence is inadmissible to vary the terms of a written document, except under special circumstances. RAM DEYE KOWEE v. BISHEN DYAL SINGH

8 W. R., 339

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.***Evidence to vary deed—continued.*

39. ————— *Fraud or mistake, Allegation of.*—Parol evidence cannot be admitted to contradict a deed except when fraud, mistake, surprise, or the like is alleged. *ERSKINE & Co. v. OKHOY CHUNDER DUTT* . . . **W. R., 1864, 58**

KASSIM MUNDLE v. NOOR BIBEE . . . **1 W. R., 76**

40. ————— *Conduct of parties.—Inadequacy of consideration.*—Parol evidence is not admissible to alter or vary a written document, even if the inadequacy of the consideration and the conduct of the parties show that the transaction was different from what appears in the instrument or writing. *MADHAB CHANDRA ROY v. GANGADHAR SAMANT*

[**3 B. L. R., A. C., 83; 11 W. R., 450**

41. ————— *Contemporaneous agreement.*—Oral evidence is admissible in equity where, by way of defence, the object is to get rid of a written contract of a sale of land by showing that it is not the contract really entered into by the parties; but the evidence must be very powerful to induce the Court to believe that the terms expressed are not the real ones. Evidence of a contemporaneous oral agreement to suspend the operation of a written contract of sale until an agreement for a re-sale is executed, is admissible as a defence even in a Court of Law. *DADA HONAJI v. BABAJI JAGUSHET*

[**2 Bom., 38; 2nd Ed., 36**

42. ————— *Suit in Small Cause Court.—Agreement not correctly stated in deed.*—In a suit in a Small Cause Court to enforce a written agreement, the defendant has a right to set up and adduce parol evidence to prove such a state of facts as would show that the instrument did not correctly set forth the terms of the arrangement between the parties, and thereby justify the Court in its character of a Court of Equity in amending the agreement in a suit for that express purpose. *FREWIN v. PAUL*

[**12 W. R., 532**

43. ————— *Suit on bond.—Intention of parties as to penal clause.*—In a suit on a bond the defendant sought to adduce evidence to show that after the execution of the bond the plaintiff stated that a certain clause as to a high rate of interest in default was intended to operate as a penal clause, and that the conditions therein would not be enforced. *Held* that the evidence tendered was not admissible. *Bakshu Lakshman v. Govinda Kanji, I. L. R., 4 Bom., 594; and Hem Chunder Soor v. Kally Churn Dass, I. L. R., 9 Calc., 528*, approved and distinguished. *BEHARY LOH DASS v. TEJ NARAIN*

[**I. L. R., 10 Calc., 764**

44. ————— *Proof of consideration different from that expressed in contract.*—Parol evidence is inadmissible to show that in an agreement to pay an annuity there was a consideration for the granting of the annuity different from that ex-

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.***Evidence to vary deed—continued.*

pressed in the agreement. *JAFAR ALI NIZAM ALI v. AHMED ALI IMAM HAIDARABADHI*

[**5 Bom., A. C., 37**

45. ————— *Evidence to contradict deed.—Contract contained in written instrument.—Custom, Evidence of.*—Where a written instrument provided for a joint tenancy and joint contract by all the parties executing to pay the whole rent of a village without any reference to the quantity of land in the holding of each,—*Held* that oral evidence was not admissible to show that separate specific contracts were entered into by each of the parties, and it made no difference that the evidence was put forward as evidence of a custom. *MORRIS v. PANCHANADA PILLAY* **5 Mad., 135**

46. ————— *Evidence of verbal agreement not to enforce document.*—When a plaintiff attempts to enforce, as a contract of loan binding upon the defendant, immediately upon its execution, an instrument which he verbally agreed at the time should not so operate, and for which the defendant received no consideration, the latter may give evidence of the verbal agreement. *ANNAGURUBALA CHETTI v. KRISTNASWAMI NAYAKAN*

[**1 Mad., 457**

47. ————— *Contemporaneous oral agreement.—Evidence Act, s. 92.*—Plaintiff sued to recover R21,650-5-1, balance of principal and interest due. He alleged in his plaint that between the 16th February and 23rd July 1867, he paid, at the request of defendant's father, the late G. F. Fischer, R25,000 on account of the Shivagunga zemindari; that the defendant, having assumed the management of the zemindari under an assignment from his father, gave plaintiff a receipt for the said sum of R25,000 under date the 7th August 1867; that in October and December 1867, defendant paid the sum of R5,000 and R3,000 respectively, in part liquidation of the debt, but since 20th December 1867 refused any further payment. Defendant answered that this debt due by the late G. F. Fischer had been validly released by the terms of an assignment, dated 29th July 1871; that the receipt given by defendant was a mere acknowledgment of the payment of R25,000 by the plaintiff to the late G. F. Fischer, and imposed no obligation on defendant to pay the said amount; that there was no consideration for defendant's promise to pay R25,000; that when defendant executed the receipt he was not aware of the effect of the release, and that the part-payments were made under a mistaken idea of liability. At the hearing it was not disputed that a release was executed, and that this claim was embodied and intended to be embodied in that written release, but it was attempted to set up a contemporaneous oral agreement, leaving this claim as a subsisting demand. The Civil Judge dismissed the suit, holding that this oral evidence could not be adduced to contradict the written release. *Held*, on regular

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence to contradict deed—continued.**

appeal, that the Civil Judge was right. The principle is,—Is the matter of the contemporaneous oral agreement so outside the scope of the written one that they can logically subsist together, so that the oral shall neither contradict nor modify the written? In the present case, to set up an oral agreement that the sum released should in fact be paid, is to deal with an object already embodied in the written agreement in a manner antagonistic to its provisions. It is not only to vary what the words do mean, but what they were intended to mean. The subsequent receipt for the money did not create a debt, for the release had already extinguished it. *FISCHER v. FISCHER*

[6 Mad., 393]

48. ——— Mortgage of and advances to indigo concern.—Evidence Act, s. 92.—*M.*, the manager of an indigo concern, under section 243, Act VIII of 1859, by a deed dated the 1st February 1873, in which the owners of the concern joined, which was duly registered, and which was made with the Court's sanction, mortgaged the concern, and pledged and assigned the season's crop to *A.* and *B.*, who were *parda-nashins*, to secure repayment of a large sum of money, consisting partly of the balance of previous loans from the husband of *A.* and *B.*, and partly of a new loan to the extent of what was described in the deed as the estimated outlay of the season. The deed provided that *A.* and *B.* should have a first charge upon the indigo to be manufactured in the season in respect of the moneys secured thereby; that the indigo should be sold subject to *A.*'s and *B.*'s direction; that until the debt was paid *M.* should have no power to transfer, sell, or mortgage the properties thereby mortgaged, pledged, and assigned, or in any way to deal with the sale proceeds of the manufactured indigo; and that *A.* and *B.* should have full power to arrange for the appointment and dismissal of the servants of the concern, and for its better management. Previously to this, namely, in October 1872, *M.* had, in pursuance of his letter of appointment, filed an estimate for the season's outlay largely exceeding the sum mentioned in the deed as the estimated outlay, and had alleged that, at the time of executing the mortgage deed, he had informed one *C.* who was the general manager of *A.* and *B.*, and as such was the only medium of communication between *M.* and *A.* and *B.*, that further advances would be necessary. According to *M.*'s account *C.* told him that *A.* and *B.* were unable to make further advances, and that he could, if they were needed, obtain them on the usual terms from the plaintiffs, who were indigo brokers. In previous years, during the lifetime of the husband of *A.* and *B.*, who had held similar mortgages of the concern and of the crop in those years to secure advances made by him, such advances had, with the mortgagee's knowledge, been supplemented by loans obtained from the plaintiffs on the security of a first charge upon the crop to the extent of such loans. And it was alleged by *M.* that it was upon the understanding that the same course

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence to contradict deed—continued.**

was to be followed in the present instance that the mortgage deed to *A.* and *B.* was executed. In a suit against *A.*, *B.*, and *M.*, to establish a first charge in respect of their advances to *M.* upon 360 maunds of the indigo,—*Held per GARTH, C.J., PHAR and MACPHERSON, JJ.*, that the alleged oral agreement between *C.* and *M.*, as to obtaining loans, if necessary, from the plaintiffs and giving them a first charge on the season's indigo in respect of such loans was in direct contravention and defeasance of the mortgage deed to *A.* and *B.*, and was therefore inadmissible in evidence under section 92 of the Evidence Act. *MORAN v. MITTU BIBER*. I. L. R., 2 Cal., 58

49. ——— Evidence Act, s.

92.—Admissibility of parol evidence inconsistent with kabuliati.—Plaintiff having sued for arrears of rent payable under a *kabuliati* in respect of a share of four villages, the defendant pleaded that he had been put in possession of one only of the four leased to him, and that therefore he was not liable for the whole claim. Parol evidence was admitted to show that at the time the *kabuliati* was granted it had been agreed between the plaintiff and defendant (the title of the former being under dispute) that the whole rent payable under the *kabuliati* should be payable in respect of such of the villages as should actually come into defendant's possession. *Held* that such parol evidence was rightly admitted, there being no stipulation in the lease that the defendant should only pay rent on being put completely into possession, and that although payment of rent is not ordinarily enforced unless the lessor puts the lessee into possession, it was quite competent to the parties to waive such privilege. *RAM KISHORE LALL v. NAND RAM* [4 C. L. R., 100]

50. ——— Evidence to add terms to deed.—Evidence Act, s. 92.—Suit for specific performance of written contract subsequently varied by parol.—A registered lease, renewable at the former rent, at the expiration of the period fixed thereby, having been granted, it appeared that the lessors were entitled to a 6 annas share only instead of to the whole property leased. It was alleged by the lessee that it was then verbally arranged that the rent should be reduced in proportion, and the lessee in fact did pay the rent during the term in proportion to the interest of the lessors. On the expiration of the term he sued for specific performance of the contract, as modified, for a renewal of the lease of the 6 annas. *Held* that evidence of the parol variation of the contract was not admissible under section 92 (4) of the Evidence Act, and that the plaintiff was not entitled to the relief sought. *DWARAKA NATH CHATTOPADHYA v. BHOGOBAN PANDA*

[7 C. L. R., 577]

51. ——— Evidence to add terms to contract.—Evidence Act, s. 92, proviso (3).—Parol evidence in addition to condition in kistibundi.—Part

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence to add terms to contract—continued.**

performance of portion of obligation in kistibandi.
—Per GARTH, C. J.—Where, at the time of the execution of a written contract, it is orally agreed between the parties that the written agreement shall not be of any force until some condition precedent has been performed, the rule that parol evidence of such oral agreement is admissible to show that the condition has not been performed, and consequently that the contract has not become binding, cannot apply to a case where the written agreement had not only become binding, but had actually been performed as to a large portion of its obligations. The true meaning of the words “any obligation” in the 3rd proviso to section 92 of Act I of 1872, is any obligation whatever under the contract, and not some particular obligation which the contract may contain.
JUSTANUND MISSEK v. NAGESHAN SINGH
 [I. L. R., 6 Calo., 433; 7 C. L. R., 347]

52. — Evidence Act, s. 92, proviso (1).—Fraud.—Unlawful consideration.—Act IX of 1872, s. 28.—Plaintiff sued to recover rent under a kabuliati. The defendant admitted execution of the kabuliati, but asserted that he executed it in order to enable the plaintiff to sell the land at a high price, the plaintiff agreeing to make over to him Rs282 out of the purchase-money, and to obtain for him from the purchaser a mairasi pottah of the land; it never having been intended that any rent should be payable under the kabuliati. *Held* that evidence of the oral agreement was admissible for the purpose of proving the fraudulent character of the transaction between the parties. ***KASHI NATH CHUCKERBUTTY v. BRINDABUN CHUCKERBUTTY**
 [I. L. R., 10 Calo., 649]

53. — Evidence Act, 1872, s. 92.—Time bargain.—Wagering contract.—Sale of Government securities.—The question whether an unambiguous written contract for the sale and purchase of Government paper is a contract or agreement by way of wager, must be decided on the expressed terms of the contract itself, and parol evidence is not admissible to vary or contradict those terms. **JUGGERNATH SEW BUX v. RAM DYAL**
 [I. L. R., 9 Calo., 791]

54. — Evidence Act, s. 92.—Bill of Exchange.—Exclusion of evidence of oral agreement.—It was agreed between the Bank of Bengal at Calcutta and C. & Co., who carried on business there, that the Branch of the Bank at Cawnpore should discount bills to a certain extent drawn by C., who carried on business at Cawnpore, on C. & Co., against goods to be consigned by rail to C. & Co., and that the railway receipts for such consignments should be forwarded to C. & Co. through the Cawnpore Branch of the Bank. C. accordingly drew a bill on C. & Co., payable twenty-one days after date, which the Cawnpore Branch of the Bank discounted, receiving the railway receipt for certain

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence to add terms to contract—continued.**

goods consigned to C. & Co. C. & Co. having accepted this bill, the Bank handed over the railway receipt to them. In a suit by the Bank against C. on the bill, the latter set up as a defence that the bill had been discounted by the Bank on the oral understanding that the railway receipt was not to be transferred to C. & Co. until they had paid the amount of the bill, and that the Bank had, by the breach of this condition, determined the defendant's liability. *Held* by STRAIGHT, J. (SPANKIE, J., dissenting), that evidence of such oral understanding was not admissible even under proviso 3 of section 92 of Act I of 1872. **COHEN v. BANK OF BENGAL**
 [I. L. R., 2 All., 596]

55. — Evidence Act, s. 92, proviso (4).—Oral agreement to rescind registered contract.—D. sold a house to P., and executed a deed of conveyance which was duly registered. P. did not pay the purchase-money, and therefore did not get possession. Shortly after the conveyance had been registered, P. returned it to D., with an endorsement thereon to the effect that it was returned because P. was unable to pay the purchase-money. In a suit by the purchaser at an execution sale of the right, title, and interest of P. in the house against D. for possession, *Held*, the conveyance by D. to P. having been registered, no oral agreement to rescind it could be proved under the Evidence Act (I of 1872), section 92, proviso (4). **UMEDMAL MOTIRANI v. DAVU BIN DHONDIBA** . I. L. R., 2 Bom., 547

56. — Evidence to vary nature of deed.—Parol evidence to vary contents of documents.—Mortgage by Hindu parda-nashin lady.—Execution, Proof of.—In a suit to enforce a mortgage against a Hindu parda-nashin lady, the Court will look strictly at the circumstances under which the mortgage was executed; and if it appears that she was acting without sufficient advice, that her ignorance was taken advantage of, or that undue influence was exerted to induce her to execute the deed, the Court will refuse to enforce the mortgage. The onus is upon the party interested in upholding the transaction to show the absence of undue influence, and that its terms were fair and equitable. He should show that the party he wishes to bind had good advice in the matter, and acted therein independently of himself. This is especially so when there was any fiduciary relationship between the contracting parties. **KANAI LALL JOWHARI v. KAMINI DEBI**
 [I. B. L. R., O. C., 31, note]

57. — Deed of sale.—Oral evidence is not admissible to set aside a deed of sale which by its terms is clearly absolute. **JUGO-BUNDHOO MOOKERJEE v. LUCKHESHTARR DEBIA**
 [W. R., 1864, 388]

RAM DOOLAL SEN v. RADHA NATH SEN
 [23 W. R., 167]

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.**

Evidence to vary nature of deed—continued.

58. ————— Conveyance by lease and release in fee, under the circumstances, held to be subject to a parol defeasance, and to be in the nature of a mortgage, with a power of repurchase on the footing of redemption; and a reconveyance was decreed. *MUTTY LALL SEAL v. ANNUNDO CHUNDER SANDLE* . . . **5 Moore's I. A., 72**

59. ————— Parol evidence may be received to show that, notwithstanding a deed purports to be a deed of absolute sale, the true nature of the transaction is a mortgage. *KASHINATH ROY v. NOWCOWEY KOONDOD* . . . **1 W. R., 22**

SOOKNA MREDDH v. GUNDHOO RAM MUNDUL
[**12 W. R., 264**]

BAHESHUR DASS v. BAHNE MADHUR DOSS
[**15 W. R., 256**]

NANDOLALL MITTER v. PROSONNO MOYEE DEBIA
[**19 W. R., 383**]

60. ————— *Allegation of fraud and collusion.—Execution of deed.*—In a suit by a pardah lady to set aside a bill of sale, execution of which by her had been obtained by collusion and fraud, the Court admitted parol evidence to show that the bill of sale was intended by her to operate only as a mortgage, and to vary the rate of interest therein stipulated for. *MANOHUR DASS v. BHAGABATI DASI* . . . **1 B. L. R., O. C., 28**

61. ————— *Mortgage.—Bill of sale.—Suit for specific performance.*—In a suit for specific performance of an agreement to convey certain property, the contract, which was in writing, was admitted by the parties; but the defendant alleged that there had been an understanding verbally come to that if he repaid the consideration money with interest, &c., to the plaintiff within two years, the plaintiff would reconvey the premises to him.—*Held* that the defendant could give parol evidence to supplement the written contract, and show that it was intended to be a mortgage and not an absolute bill of sale. *BHOLANATH KHETTRI v. KALIPRASAD AGUEWALLA* . . . **8 B. L. R., 89**

62. ————— *Evidence Act, s. 92.—Oral agreement contemporaneous with deed of sale.*—The defendant admitted the execution of a deed of sale, but alleged that contemporaneously with it he entered into an oral agreement with the vendee that the deed was to be merely a security for the payment of a certain sum of money by the defendant to the vendee, and that a large portion of the sum so secured had already been paid to the vendee. *Held* in special appeal that as the alleged agreement was wholly inconsistent with the terms of the deed of sale, evidence to prove such agreement was excluded by Act I of 1873, section 92. *Muttyloll Seal v. Annundo Chander Sande*, 2 Moore's I. A., 72, distinguished. *BANAFI v. SUNDARAS JAGTIVANDAS*
[**1 L. R., 1 Bom., 383**]

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.**

Evidence to vary nature of deed—continued.

63. ————— *Mortgage.—Sale.—Oral evidence when admissible to prove that an apparent sale is a mortgage.—Evidence Act (I of 1872), ss. 91, 92, and 115.—Conduct of parties.—Specific Relief Act, s. 26.*—A party, whether plaintiff or defendant, who sets up a contemporaneous oral agreement as showing that an apparent sale was really a mortgage, should not be permitted to start his case by offering direct parol evidence of such oral agreement; but if it appear clearly and unmistakably, from the conduct of the parties, that the transaction has been treated by them as a mortgage, the Court will give effect to it as a mortgage, and not as a sale, and therefore, if it be necessary to ascertain what were the terms of the mortgage, the Court will for that purpose allow parol evidence to be given of the original oral agreement. *Daimoddes Paik v. Kaim Teridar*, **1 L. R., 5 Cal., 800**, dissented from. Although parol evidence will not be admitted to prove directly that simultaneously with the execution of a bill of sale there was an oral agreement by way of defeasance, yet the Court will look to the subsequent conduct of the parties, and if it clearly appears from such conduct that the apparent vendee treated the transaction as one of mortgage, the Court will give effect to it as a mortgage and nothing more. It is a mistake to reject evidence of the conduct of parties to a written contract on the ground that it is only an indication of an unexpressed unwritten contract between them. Conduct is, no doubt, evidence of the agreement out of which it arose; but it may be very much more. In many cases it may amount to an estoppel. In such a case it is clear that evidence of conduct would be strictly admissible under section 115 of the Evidence Act (I of 1872). And even when conduct falls short of a legal estoppel, there is nothing in the Evidence Act which prevents it from being proved, or, when proved, from being taken into consideration. Courts of Equity in England will always allow a party (whether plaintiff or defendant) to show that an assignment of an estate, which is, on the face of it, an absolute conveyance, was intended to be nothing more than a security for debt, and they will not only look to the conduct of the parties, but will admit mere parol evidence to show or explain the real intention and purpose of the parties at the time. The exercise of this remedial jurisdiction is justified on two grounds, viz.; part performance and fraud. The Courts in India are not precluded by the Evidence Act from exercising a similar jurisdiction. The rule of estoppel, as laid down in section 115, covers the whole ground covered by the theory of part performance. That section does not say that, in order to constitute an estoppel, the acts which a person has been induced to do must have been acts prejudicial to his own interest. Its terms are sufficiently wide to meet the case of a grantor who has simply been allowed to remain in possession on the understanding and belief that the transaction was one of mortgage, and thus every in-

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence to vary nature of deed—continued.**

stance of what the English Courts call "part performance" would be brought within the Indian rule of estoppel. But the ground upon which this jurisdiction of the Courts in India may most safely be rested, is the obligation which lies upon them to prevent fraud. The Courts will not allow a rule, or even a statute which was passed to suppress fraud, to be the most effectual encouragement to it, and accordingly in England the Courts, for the purpose of preventing fraud, have in some cases set aside the Common Law rules of evidence and the Statute of Frauds. The Courts in India have the same justification in dealing similarly with the obstacles interposed by the Evidence Act. In thus modifying the rules laid down by sections 91 and 92 of that Act, the Courts will not be acting in opposition to the intention of the Legislature, which by enacting the provisions of section 26, clause (c) of the Specific Relief Act (I of 1877), has shown an intention to relax the rules of the Evidence Act so as to bring them into conformity with the practice of the English Courts of Chancery. *Quere*,—Whether proviso (1) to section 92 of the Evidence Act is not large enough to let in evidence of such subsequent conduct as in the view of the Court of Equity would amount to fraud, and would entitle a grantor to a decree restraining the grantee from proceeding upon his document. **BAKSU LAKSHMAN v. GOVINDA KANJI**

[I. L. R., 4 Bom., 594]

64. —Evidence Act, s. 92.—Admissibility of evidence to contradict document.—*A.*, by a deed of sale absolute on its face, transferred certain land to *B.* for the sum of Rs79. *A.* alleged that at the time the transaction was entered into it was understood and orally agreed that the sale was merely by way of security for the payment of Rs400 due to a third party, *C.*, under a compromise made by *A.* with *C.*, for the satisfaction of a decree for Rs32, which the latter held against *A.*; and that it was at the same time orally agreed between *A.* and *B.* that on the payment of the money by *A.* to *C.*, the deed of sale should be delivered to the former. Subsequently *A.* brought a suit against *B.* for the return of the kobala, alleging that the whole of the money had been paid to *A.* Held that section 92 of the Evidence Act I of 1872 prevented the admission of evidence of the oral agreement to contradict the deed of sale which had admittedly been contemporaneous. **RAM DYAL BAJPAI v. HEERA LAL PARAY**

[3 C. L. R., 386]

65. —Evidence Act, s. 92.—Evidence contradicting document.—Mortgage.—Conditional sale.—It does not necessarily follow from section 92 of the Evidence Act that subsequent conduct and surrounding circumstances may not be given in evidence for the purpose of showing that what on the face of it is a conveyance is really a mortgage. This rule turns on the fraud which is in-

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence to vary nature of deed—continued.**

volved in the conduct of the person who is really a mortgagee, and who sets himself up as an absolute purchaser, and the rule of admitting evidence for the purpose of defeating this fraud would not apply to an innocent purchaser without notice of the existence of the mortgage, who merely bought from a person who was in possession of title-deeds and was the ostensible owner of the property. **KASHI NATH DASS v. HURRIHUR MOOKERJEE**

[I. L. R., 9 Cal., 886: 13 C. L. R., 11]

66. —Evidence Act (I of 1872), s. 92.—Mortgage.—Sale.—Conduct of parties.—Oral evidence when admissible to prove that an apparent sale is a mortgage.—Admissibility of parol evidence to vary a written contract.—The defendant, in answer to a suit by the plaintiff for possession of certain land, alleged that the kobala, which purported to be an out-and-out sale in favour of the plaintiff and on which the plaintiff based his title to the property, was intended by the parties to operate only as a mortgage; and to prove such allegations tendered evidence of the circumstances under which the kobala was executed, and of the conduct of the parties to show that the document had all along been treated as a mortgage and intended to operate as such. Held that such evidence was admissible. Held, also, that section 92 of the Evidence Act made no alteration in the law as laid down in *Kashi Nath Chatterjee v. Chandhi Churn Banerjee*, B. L. R., Sup. Vol., 388, but is in accordance with what was decided in that case. **Baksu Lakshman v. Govinda Kanji**, I. L. R., 4 Bom., 594, followed. *Ram Dyal Bajpai v. Heera Lal Paray*, 3 C. L. R., 386; and *Daimoddes Patk v. Kaim Toridar*, I. L. R., 5 Cal., 300, dissented from. **HEM CHUNDER SOOR v. KALLY CHURN DASS**

[I. L. R., 9 Cal., 528: 12 C. L. R., 267]

67. —Evidence of agreement to pay interest on document.—Evidence of contemporaneous agreement.—Suit on hath-chitta.—In a suit upon a hath-chitta, the Court, having regard to the informal nature of the document sued upon, allowed evidence to be given of a verbal agreement to repay the amount acknowledged with interest, no mention having been made as to interest in the hath-chitta itself. **UMESH CHUNDER BANERJEE v. MOHINI MOHUN DASS**

9 C. L. R., 301

68. —Suit on promissory note.—Where a promissory note is silent as to interest, a verbal agreement made subsequently to the execution of the note to pay interest may be proved under clause 2 of section 92 of the Evidence Act. **IN THE MATTER OF SOWDAMONEN DEBYA v. SPALDING**

12 C. L. R., 163

69. —Suit on promissory note.—When a note of hand promised repayment of a loan, with interest at five per cent., without

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence of agreement to pay interest on document—continued.**

stating either *per mensem* or *per annum*,—*Held* that the construction that interest was to be calculated without reference to time was contrary to all practice, and that the ambiguity was one which might fairly be explained by previous transactions between the parties and by custom. **MAHOMED SHAMSOODDEEN v. ABDOL HUG** . . . **W. R., 1864, 379**

70. ——— Evidence to show rate of interest.—Evidence Act, s. 92.—Suit on promissory note.—Suit for balance of principal due for money lent, with interest thereon at 5 per cent. per mensem. It appeared that the defendant, being indebted to plaintiff on a promissory note for Rs500, applied to him for a further loan of Rs1,500, proposing to lay out the whole amount of Rs2,000 in the performance of a contract then subsisting between himself and the Madras Railway Company and offering to give plaintiff a share in such contract: that plaintiff consented to lend the said sum payable with interest at 6 or 7 per cent. per mensem in lieu of becoming a partner, and also to give defendant two months' previous notice on requiring repayment of the loan. Defendant demurred to the rate of interest, which he said he would further consider on his return to Cuddapah, but, being in immediate want of the money, proposed to borrow it on a promissory note. Plaintiff, accordingly, on the 18th October 1870, lent defendant Rs1,500, and obtained, in lieu of the note for Rs500, which was returned, a promissory note for Rs2,000, payable on demand, with interest at 12 per cent. per annum, which note, plaintiff alleged, it was agreed should be cancelled on receipt of a letter from the defendant fixing the rate of interest (this was denied by defendant). Defendant subsequently wrote two letters to plaintiff, agreeing to pay interest at 5 per cent. per mensem, and plaintiff endorsed the said note as cancelled. Plaintiff also alleged that he received interest at the rate of 5 per cent. per mensem for two months, and produced a witness who deposed to that effect. This defendant denied. *Held* by the Original Court (following *Abray v. Cruz, L. R., 5 C. P., 87*) that the oral evidence was inadmissible to show the rate of interest *dehors* that of the promissory note, and that the subsequent letters, offering a higher rate of interest, were without consideration, for there was not any evidence of forbearance, and that the plaintiff had a right to sue on the promissory note the very day after it was made. Plaintiff appealed on the ground that the evidence was admissible. *Held* by **MORGAN, C. J.**, that the evidence was admissible: that the law is that, notwithstanding a paper writing which purports to be a contract may be produced, it is still competent to the Court to find, upon sufficient evidence, that this writing is not really the contract; and the risk of groundless defence does not affect the rule itself, though it suggests caution in acting on it: that in this case, at the time of the advance of the money, there was an agreement touching the transaction of loan, although the rate of inter-

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence to show rate of interest—continued.**

est was still unsettled and under discussion; the plaintiff declined to lend on the terms of a joint interest in the venture as proposed by the defendant; and the latter refused to pay the rate demanded; before any final agreement, and while the transaction was still incomplete, the note was given, not as a writing which expressed or was meant to express the final contract, but rather as a voucher, or a temporary and provisional security for the money pending the discussion respecting the rate of interest; and that if the note was thus given and received, it should not be regarded as the contract between the parties, or as a written contract excluding other evidence of the true contract. By **KERNAN, J.** (concurring with the Chief Justice as to the admissibility of the evidence), that assuming that the promissory note did represent a complete contract between the parties, such contract was waived and discharged by the acts and agreement of the parties before breach, and a new contract, namely, the contract for larger interest, substituted. *Abray v. Cruz, L. R., 5 C. P., 87*, distinguished. **GUDDALU RUTHNA MUDALIYAR v. KUNNATTUR ARUMUGA MUADILIYAR** . . . **7 Mad., 189**

71. ——— Consideration for deed.—Proof of consideration.—Recital in bond.—Oral evidence is admissible to prove that consideration has not been paid at all or in full, notwithstanding the recital in the bond that full consideration has been paid. **WALSH MAHOMED v. KUMUR ALI**

[7 W. R., 428]

72. ——— Proof of want of consideration, or only portion paid.—Oral evidence may be received to prove that the consideration stated in a deed to have been paid was not paid, but not to prove that only a small portion of the consideration stated in the deed to have been received in full was to be paid at the time, and that the rest was not only to remain in abeyance pending the result of a suit, but to be paid only in case of the successful termination of that suit. **SHENWAR SINGH v. ASGUR ALI**

[8 W. R., 267]

73. ——— Evidence to show only portion of consideration of bond was received.—Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash,—*Held* that it was open to the defendant to show, by evidence, that only a portion of the principal sum had been received by him. **GAURVALLABA RAMOHANDRA VELLIA BOMAYA NATIK v. VIRAPPA CHETTI** . . . **2 Mad., 174**

74. ——— Proof of consideration stated in a deed.—Section 92 of the Evidence Act (I of 1872) prevents the admission of oral evidence for the purpose of contradicting or varying the terms of a contract, but does not prevent

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Consideration for deed—continued.**

a party to a contract from showing that there was no consideration, or that the consideration was different from that described in the contract. Where, therefore, a deed of sale described the consideration to be Rs100 in ready cash received, but the evidence showed that the consideration was an old bond for Rs63-12-0 and Rs36-4-0 in cash.—*Held* that there was no real variance between the statement in the deed and the evidence as to consideration, having regard to the fact that it is customary in India, when a bond is given wholly or partially in consideration of an existing debt, to describe the consideration as being "ready money received." **HUKUMOHAD v. HIRALAL**

[I. L. R., 3 Bom., 159]

VASUDHYA BHATLU v. NARASAMMA

[I. L. R., 5 Mad., 6]

75. ——— Oral evidence when admissible to prove that consideration-money stated in contract to have been paid, has not been paid, but has been applied in a way agreed on between the parties.—Evidence Act, I of 1872, s. 92.—A deed of *putawa* contained a recital of the payment of the sum of Rs2,000 as bonus to the plaintiff by the defendant, the mode of payment being stated to be in cash in one lump sum. The plaintiff sued to recover the sum of Rs1,850, alleging that only Rs150 had been paid, and not Rs. 2,000 as recited in the *putawa*. The defendant admitted that Rs50 was due, and as to the remaining Rs1,000 alleged that, at the time of the transaction, it was agreed that the sum of Rs1,000 was to be retained by him on account of a debt due by one of the plaintiff's relations to him. The plaintiff objected that the evidence of the agreement set up by the defendant was inadmissible. *Held* that, inasmuch as it was open to the plaintiff under proviso 1 of section 92 of the Evidence Act to prove by oral evidence that the whole of the consideration-money had not been paid, it was equally competent to the defendant, in answer to such case, to adduce evidence to prove the true nature of the contract, and that the consideration was different from that stated in the contract. *Held*, also, that the plea of the defendant substantially was that, although the consideration was fixed at Rs2,000, there was a separate oral agreement to the effect that out of that sum the plaintiff was to refund Rs1,000 on account of the debt due from his relative, and that on this ground the oral evidence tendered was admissible under proviso 2 of section 92 of the Act, the stipulation as to the refund of the Rs1,000 not being inconsistent with the recital as to the consideration in the contract. **LALA HIMMAT SAKAI SINGH v. LLEWELLEN**. . . I. L. R., 11 Cal., 486

76. ——— Evidence to prove contract.—Statute of Frauds.—Variance between bought and sold notes.—The defendant, a Hindu, entered into a contract of sale with the plaintiff through the medium of a broker. The broker made no entry of the contract in his book, and there was a material vari-

EVIDENCE—PAROL EVIDENCE—continued.**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.****Evidence to prove contract—continued.**

ance in the bought and sold notes delivered by him. The notes were accepted and retained by the plaintiff and defendant respectively. In an action for non-delivery under the contract,—*Held* that the contract was made before the notes were written; the notes were sent by the broker to his principals merely by way of information; and the Statute of Frauds not applying, the plaintiff was at liberty to give parol evidence of the terms of the contract. **CLARTON v. SHAW** . . . 9 B. L. R., 245: 16 W. R., 414

77. ——— Contract of indemnity.—Evidence Act, s. 92.—Mortgage.—Contemporaneous oral contract.—In a deed of mortgage executed on behalf of a minor by his guardian in favour of T. (who did not execute it), it was recited that the mortgage was made to secure the repayment of a certain sum which T. had undertaken to expend in liquidating certain debts due by the minor's estate, and, amongst others, a debt due to K. T. having failed to pay this debt, K. obtained a decree against, and was paid by, the minor's guardian. In a suit brought on behalf of the minor against T. to recover the amount paid in satisfaction of K's decree, T. pleaded that it had been orally agreed at the time of the mortgage that he was to obtain an indemnity either from K. or from the minor's guardian before payment, in case the minor repudiated the debt on coming of age. The District Court rejected the evidence in support of this plea, on the ground that it was inadmissible by virtue of section 92 of the Evidence Act, 1872. *Held* that the evidence was admissible. **TIRUVENGADA v. RANGASAMI**

[I. L. R., 7 Mad., 19]

EVIDENCE ACT (II OF 1855).**s. 4.**

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ENTRIES BY OFFICERS OF COURT . . . 8 W. R., 276

ss. 6 and 8.

See EVIDENCE—CRIMINAL CASES—GOVERNMENT GAZETTE.
[7 B. L. R., 63: 15 W. R., Cr., 25]

s. 13.

See EVIDENCE—CIVIL CASES—MAPS.
[10 W. R., 301]

s. 14.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—QUESTIONS OF LAW AND FACT . . . 8 W. R., Cr., 60

s. 24.

See PRIVILEGED COMMUNICATION.
[15 W. R., 340
1 B. L. R., A. Cr., 8]

EVIDENCE ACT (II OF 1855)—continued.

- s. 31.
See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, &c.
[7 W. R., Cr., 31
11 W. R., Cr., 25]
- s. 32.
See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED. 8 Bom., Cr., 103
- s. 34.
See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION . . . 15 W. R., Cr., 23
- s. 39.
See EVIDENCE—CIVIL CASES—JAMABANDI AND JAMA-WASIL-BAKI PAPERS.
[7 W. R., 533]
- s. 43.
See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS . Marsh., 219
See EVIDENCE—CIVIL CASES—JAMABANDI AND JAMA-WASIL-BAKI PAPERS.
[7 W. R., 533
8 W. R., 290, 323
10 W. R., 291]
- s. 45.
See EVIDENCE—CIVIL CASES—JAMABANDI AND JAMA-WASIL-BAKI PAPERS.
[7 W. R., 533]
- s. 47.
See EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE . . . 9 W. R., 151
- s. 48.
See EVIDENCE—CRIMINAL CASES—NATIVE SNAIS . . . 6 W. R., Cr., 5
- s. 53.
See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.
[4 B. L. R., P. C., 31
13 W. R., P. C., 36]
- s. 57.
See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.
[8 W. R., 499]

EVIDENCE ACT (I OF 1872).

- s. 3.—"Court."—Registration Act (VIII of 1871), s. 32.—Sub-Registrar.—Penal Code, s. 228.—By section 32 of the Registration Act a Sub-Registrar is a public officer, and proceedings before him are judicial proceedings within the meaning of section 228 of the Penal Code; and as he is legally authorised to take evidence, he is a "Court" as defined by the Evidence Act, section 3. IN THE MATTER OF THE PETITION OF SARDHARI LAL
[13 B. L. R., Ap., 40: 22 W. R., Cr., 10]
- s. 5.
See s. 11 . . . 11 Bom., 103

EVIDENCE ACT (I OF 1872)—continued.

- ss. 5-14.
See EVIDENCE—CRIMINAL CASES—ILLEGAL GRATIFICATION.
[1 L. R., 6 Cal., 655]
- s. 6.
See s. 8 . . . 1 L. R., 10 Cal., 302
1. — s. 8, ill. (k).—*Admission.—Confession.*—A prisoner was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered the loss of the property, and stated his loss to a railway police inspector at the first station at which the train stopped after he became aware of the theft, the prisoner not then being present. This statement was tendered in evidence, and admitted under section 8, illustration (k), of the Evidence Act. Evidence was also tendered of a statement made by the prisoner to the constable who arrested him, to the effect that some of the property had been given him, and that he had bought the rest, and this was admitted; the Court remarking that there was a distinction in the Evidence Act between "admission" and "confession."
QUEEN v. MACDONALD . . . 10 B. L. R., Ap., 2
2. — s. 8, ill. (g), and s. 6.—*Statement made to third person by person injured.*—The only evidence against a prisoner charged with having voluntarily caused grievous hurt was a statement made in the presence of the prisoner by the person injured to a third person immediately after the commission of the offence. The prisoner did not, when the statement was made, deny that she had done the act complained of. Held that the evidence was admissible under section 6, and section 8, illustration (g), of the Evidence Act. IN THE MATTER OF THE PETITION OF SURAT DHOBI
[1 L. R., 10 Cal., 302]
- ss. 8 and 9.
See EVIDENCE—CRIMINAL CASES—DYING DECLARATIONS . . . 1 L. R., 7 All., 385
- s. 11.
See EVIDENCE—CIVIL CASES—DECISIONS, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—DECISIONS AND PROCEEDINGS NOT INTER PARTES . . . 11 C. L. R., 593
See RES JUDICATA—RETOPPEL BY JUDGMENTS . . . 1 L. R., 6 Cal., 171
1. — s. 11 and ss. 5 and 153.—*Statement that another witness was at a particular place at a particular time.*—The statement of a witness for the defence, that a witness for the prosecution was at a particular place at a particular time, and consequently could not then have been at another place, where the latter states he was and saw the accused persons, is properly admissible in evidence, even though the witness for the prosecution may not himself have been cross-examined on the point: sections 5, 11, and 153 (Illustration e) of Act I of 1872.
REG. v. SAKHARAM MUKUNDJI . . . 11 Bom., 103

EVIDENCE ACT (I OF 1872)—continued.

2. — s. 11 and ss. 43, 54, and 153.
Admissibility of evidence of one crime to prove existence of another.—Possession of forged documents.—Section 11 of the Evidence Act should not be construed in its widest signification, but considered as limited in its effect by section 54 of the Act. So construed, section 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected crime, even though it be cognate. Accordingly, the possession by an accused person of a number of documents suspected to be forged is no evidence to prove that he has forged the particular document with the forgery of which he is charged. *Per WEST, J.*—Where a person charges another with having forged a promissory note, and denies having ever executed any promissory note at all, the evidence that a note, similar to the one alleged to be forged, was, in fact, executed by that person, is not admissible, nor even would a judgment, founded upon such note, be so: sections 43 and 153 of the Evidence Act. *RMS. v. PARBHU-DASS AMBARAM* . . . 11 Bom., 90

See s. 83 . . . I. L. R., 5 Calo., 267

s. 13.

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—DECREES AND PROCEEDINGS NOT INTER PARTES . . . 20 W. R., 345

[23 W. R., 365

23 W. R., 163, 293

24 W. R., 284

25 W. R., 180

I. L. R., 10 Bom., 439

See RES JUDICATA—ESTOPPEL BY JUDGMENTS . . . I. L. R., 3 Bom., 3

[I. L. R., 6 Calo., 171

Right.—Public right.—The right mentioned in the Evidence Act, section 13, is not a public right only. *SOORJO NARAIN PANDA v. BIS-SUMBU SINGH* . . . 23 W. R., 311

s. 18.

See ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS.

[23 W. R., 303

I. L. R., 11 Calo., 566

s. 21.—“Representative in interest.”

Purchaser at sale in execution of decree.—The purchaser at a sale in execution of a decree was held to be a “representative in interest” of the judgment-debtor within the meaning of the Evidence Act, I of 1872, section 21. *UNHOPOORNA DASSEE v. NUYUR PODDAR* . . . 21 W. R., 148

s. 24.

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R., 2 All., 260

[I. L. R., 3 All., 388

See CONFESSION—CONFESSIONS UNDER THREAT OR PRESSURE.

[10 B. L. R., Ap., 1

I. L. R., 4 All., 43

I. L. R., 10 Calo., 775

9 Bom., 353

11 Bom., 137

EVIDENCE ACT (I OF 1872)—continued.**s. 25.**

See CASES UNDER CONFESSION—CONFESSIONS TO POLICE OFFICERS.

s. 26 (Criminal Procedure Code, 1861-69, s. 149).

See CASES UNDER CONFESSION—CONFESSIONS TO POLICE OFFICERS.

Village Munsif.—Magistrate.

A Village Munsif in the Madras Presidency is a “Magistrate” within the meaning of section 26 of the Evidence Act, 1872. *EMPERESS v. RAMAN-JIYYA* . . . I. L. R., 2 Mad., 5

s. 27 (Criminal Procedure Code, 1861-69, s. 150).

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.

[11 Bom., 242

19 W. R., Cr., 51

17 W. R., Cr., 50

s. 29.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[20 W. R., Cr., 33

s. 30.

See CASES UNDER CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.

s. 32, cl. 1.

See s. 33 . . . I. L. R., 7 Calo., 42

See EVIDENCE—CRIMINAL CASES—DYING DECLARATIONS . . . 19 W. R., Cr., 44

[I. L. R., 7 All., 385

6 C. L. R., 273

1. — s. 32, cl. 2.—Letter of advice.

On the trial of a person charged with forging a railway receipt or bill of lading for the purpose of obtaining possession of certain goods which had been sent from Delhi to Calcutta, a letter from the consignee at Delhi to his partner in Calcutta, advising the dispatch of the goods, was tendered in evidence under section 32, clause 2 of Act I of 1872 (the Evidence Act), but the Court refused to receive it, and intimated a doubt whether it fell within the instances specified in the section. *QUEEN v. TARINICHARAN DRY* . . . 9 B. L. R., Ap., 42

2. — s. 32, cl. 5.—Statements of family

priest as to relationship.—Special means of knowledge.—Evidence of statements made by a deceased family priest as to the relationship of the members of the family may be given under section 32, clause 5, of the Evidence Act. *SEAM LALL SINGH v. RADHA BIBEN* . . . 4 C. L. R., 173

3. — Statement as to

the existence of relationship.—Special means of knowledge.—The judgment of an Appellate Court, reversing that of a Court of first instance, on a question as to the existence of a relationship, rested

EVIDENCE ACT (I OF 1872), s. 32, cl. 5
—continued.

mainly on a statement recorded in prior settlement proceedings as made by a person, since deceased, who was employed therein as muktear by certain members of the family. This judgment was reversed on a second appeal by the Court above, on the ground that the statement was inadmissible, not coming within the meaning of Act I of 1872, section 32, subsection 5, as that of a person having special means of knowledge on the question. *Held* that the statement was inadmissible, as it appeared that his only means of knowledge were from his being instructed as such muktear, he not having been a member of the family, nor intimately connected with it, nor having had any special means of knowing its concerns. *Held*, also, that the Court of second appeal had rightly declined to send the case back for evidence to be taken as to whether he had, or had not, other means of knowledge. **SANGRAM SINGH v. RAJAN BAHU**

[I. L. R., 12 Calc., 219; I. R., 12 I. A., 183]

4. — s. 32, cl. 5, and ill. (1).—*Hearsay evidence.—Pedigree, Question of.—Proof of birth.—Statement of deceased father.*—In a suit on a promissory note, to which the only defence was minority, a statement made by the defendant's father (who died before proceedings by way of suit had been contemplated) to a witness as to the age of his son, held to be inadmissible as evidence of the age of the defendant in support of his defence. **BIPIN BEHARY DAW v. SURENDRA CHUNDER DEY**

[I. L. R., 13 Calc., 42]

5. — s. 32, cl. 6.—*Horoscope.*—In a suit to recover possession of immovable property, the plaintiff tendered in evidence a horoscope which he said had been given to him by his mother, and had been seen by members of his family and used on the occasion of his marriage. He was unable to say by whom the horoscope, or an endorsement on it, which purported to state what his name was, had been written. *Held* that the horoscope was not admissible under section 32, clause 6, of the Evidence Act. **RAMNARAIN KALLIA v. MONNE BIBER. RAMNARAIN KALLIA v. GOPAL DASS SINGH**

[I. L. R., 9 Calc., 613]

6. — s. 32, cl. 7.—*Evidence of family custom.*—In a suit to establish the existence of a family custom, the plaintiffs offered in evidence a deed containing a recital that the custom of the family was as alleged in the plaint, and a covenant to do nothing contrary to it. The deed was executed before action brought by the present plaintiffs, and also by a plaintiff who had died since the institution of the suit, and, as the plaint alleged, by "a considerable majority" of the family, but the defendant was not a party to it. *Held* that the deed was admissible as evidence on behalf of the plaintiffs, though they could themselves be called as witnesses; but that, though admissible, the custom as against the defendant must be proved *alioquin*. **HURONATH MULLICK v. NITTANUND MULLICK**

10 B. L. R., 263

7. — s. 32, cl. 8.—*Statement of police officer.—Common statement by a number of persons.*

EVIDENCE ACT (I OF 1872), s. 32, cl. 8
—continued.

—The statement of a police officer who goes about from place to place and collects information from different persons, which he afterwards puts in second hand before the Court, cannot be received as evidence under the Evidence Act, I of 1872, section 32, clause 8. The meaning of that clause is that, when a number of persons assemble together to give vent to one common statement, which statement expresses the feelings or impressions made in their mind at the time of making it, that statement may be repeated by the witnesses, and is evidence. **QUEEN v. RAM DUTT CHOWDHRY**

23 W. R., Cr., 35

s. 33.

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . I. L. R., 6 Calc., 532

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . I. L. R., 8 All., 672

See RECOGNIZANCE TO KEEP PEACE—LIKELIHOOD OF BREACH OF PEACE, AND EVIDENCE . 22 W. R., Cr., 36

1. — *Representatives in interest.*

—In order to satisfy the requirements of section 33 of the Evidence Act, the two suits must be brought by or against the same parties or their representatives in interest at the time when the suits are proceeding and the evidence is given. **SITANATH DASS v. MOHESH CHUNDER CHUCKERBUTTY**

[I. L. R., 12 Calc., 627]

2. — *"Incapable of giving evidence."*—The incapacity to give evidence mentioned in section 33 of the Evidence Act need not be a permanent incapacity. *IN THE MATTER OF THE PETITION OF ASGUR HOSSAIN. THE EMPRESS v. ASGUR HOSSAIN*

[I. L. R., 6 Calc., 774; 8 C. L. R., 124]

3. — *"Incapable of giving evidence."*—*Discretion of Court.—Causal incapacity.*—The words "incapable of giving evidence" in section 33 of the Evidence Act, I of 1872, denote an incapacity of a permanent, not of a temporary kind; and when a witness is proved to be incapable of giving evidence, the Court has no discretion as to admitting his deposition. But where the absence of a witness is casual or due to a temporary cause, the Court has such a discretion, if his presence cannot be obtained without an amount of delay or expense which, under the circumstances, the Court considers unreasonable. *IN THE MATTER OF PYARI LALL*

[4 C. L. R., 504]

4. — *Deposition in former suit.*

—*Admission.*—A deposition of a person in a suit to which he was not a party, is, in a subsequent suit in which he is a defendant, evidence against him and against those who claim under or purchase from him, although he is alive and has not been called as a witness. Section 33 of the Evidence Act (I of 1872) does not apply to such a deposition, but it is admissible under the sections relating to admissions, although it might be shown that the facts were different from what they were stated to be in the former

EVIDENCE ACT (I OF 1872), s. 33—continued.

case. A statement in a bill of sale is evidence against those who are parties to it. *SOOJAN BIRBE v. ACHMUT ALI*. 14 B. L. R., Ap., 3: 21 W. R., 414

5. ————— *Deposition in former suit.*—*H. N.* died on 16th May 1854, without issue, leaving a widow, *B. B.*, on 19th May 1856, purported to adopt *S.* in accordance with an alleged *anumatipatra* executed by *H. N. R. N.*, the uncle of *H. N.*, died on 6th July 1855, leaving a widow, *M.*, in whose favour he had executed an *anumatipatra*, by the terms of which she was to have the management of his property during the minority of the adopted son, in whom it was to vest on his adoption. *M.* adopted *D.* subsequently to the adoption of *S.* After the death of *R. N. B.*, as widow of *H. N.*, and adoptive mother of *S.*, brought a suit against *M.*, as the widow of *R. N.*, and ignoring the existence of *D.* *D.* died, and on his death *M.* adopted *N.* on 4th April 1864. In a suit brought by *M.* as the mother and guardian of *N.* to have the adoption of *S.* declared invalid,—*Held* that the depositions of certain witnesses who had been examined in the previous suit to establish the fact of the adoption of *S.* by *B.* were not, under section 33, Act I of 1872, admissible in evidence against the plaintiff *M.* *MRINMOYEE DABEA v. BHOOBUNMOYEE DEBYA*. 15 B. L. R., 1: 23 W. R., 42

6. ————— *Evidence given in proceeding coram non judice.*—The evidence of a witness given in a proceeding pronounced to be *coram non judice* cannot be used under section 33 of the Evidence Act, if the witness is dead, on a re-trial before a competent Court. *R.* charged *A.* with breach of trust, and *S.* gave evidence in support of the charge; *A.* being acquitted, *R.* was tried for making a false charge and *S.* for perjury. *Held* (1) that the depositions given by witnesses in the first case could be used against *R.* in the second case, but not against *S.* under section 33, Evidence Act. (2) That the word "questions" in section 33 does not mean "all the questions," and that though additional issues were involved in the second trial, yet the evidence as to the issues common to both trials was properly admitted at the second trial against *R.* *IN RE RAMI REDDI*. I. L. R., 3 Mad., 48

7. ————— and s. 32, cl. 1.—"Questions in issue."—*Charges added at Sessions.*—*Depositions before Magistrate.*—*Witness dying or absconding.*—*Qualification of jurymen.*—In the proceedings before a Magistrate on a charge of causing grievous hurt, two (among other) witnesses, one of whom was the person assaulted, were examined on behalf of the prosecution. The prisoners were committed for trial. Subsequently the person assaulted died, in consequence of the injuries inflicted on him. At the trial before the Sessions Judge, charges of murder and of culpable homicide not amounting to murder were added to the charge of grievous hurt. The deposition of the deceased witness was put in and read at the Sessions trial. *Held* that the evidence was admissible either under section 32, clause 1, or section 33, of the Evidence Act, notwithstanding the additional charges before the Sessions Court. The question whether the proviso to

EVIDENCE ACT (I OF 1872), s. 33 and s. 32, cl. 1—continued.

section 33 of the Evidence Act is applicable,—that is, whether the questions at issue are substantially the same,—depends upon whether the same evidence is applicable although different consequences may follow from the same act. At the trial it was proved that the other witness who had been examined before the Magistrate had disappeared, and that it had been found impossible to serve him with a summons. His deposition was put in and read. *Held* that it was properly admitted under section 33. *IN THE MATTER OF THE PETITION OF ROCHIA MOHATO. EMPRESS v. ROCHIA MOHATO*

[I. L. R., 7 Cal., 42
8 C. L. R., 273

8. ————— *Depositions of witnesses taken by Consul at Zanzibar.*—A prisoner accused of having committed murder at Zanzibar was sent by the British Consul there for trial before the High Court at Bombay. The Consul could not enforce the attendance of witnesses at Bombay, but he transmitted to the High Court the depositions which he had taken in the course of the enquiry he had held with regard to the commission of the alleged offence. In the absence of the witnesses these depositions were tendered in evidence at the trial in Bombay. *Held* that the British Consul at Zanzibar was authorised to take the depositions, and that they were admissible in evidence at the trial, under section 33 of the Evidence Act (I of 1872). *EMPRESS v. DOSSAJI GULAM HUSEIN*. I. L. R., 3 Bom., 334

9. ————— *Deposition of person denying he presented petition in Court.*—A deposition made by a person wherein he denied on oath that he had presented a certain petition in Court which purported to be from him, was held to be inadmissible as evidence under Act I of 1872, section 33, because the person might have been brought into Court, but was not brought by those who pleaded the said deposition. *BHOOBUN MOYEE DOSSAEE v. UMEICA CHURN SEET*. 23 W. R., 343

10. ————— *Deposition of absent witness.*—Under section 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. *QUEEN v. ETWARRE DEHARE* [21 W. R., Cr., 12

11. ————— *Deposition of absent witness.*—When the evidence of an absent witness is admitted under section 33 of the Evidence Act, 1872, the ground for its admission should be stated fully and clearly to enable the High Court to judge of the propriety of its admission. In the present case the High Court considered that the evidence of an absent witness had been improperly admitted because there was nothing to show that by ordinary care and the use of ordinary means the witness could not have been produced. In order to make a deposition admissible under section 33, there must be evidence that the accused person did in fact have an opportunity of cross-examining. *QUEEN v. MOWJAN alias NANE KHAN*. 20 W. R., Cr., 69

EVIDENCE ACT (I OF 1872), s. 38—continued.

12. ————— *Depositions of absent witnesses.—Ground for absence.*—Before a Sessions Judge can, under section 33, Act I of 1872, admit the depositions of witnesses given in a former judicial proceeding as evidence before him instead of and in place of the oral deposition of the witnesses themselves, it ought to appear that the presence of the witnesses could not be obtained without an amount of delay or expense which the Court considers unreasonable; and if there is nothing of a special nature to stand in the way, the case should be adjourned to the next Sessions to procure the attendance of the witnesses. *QUEEN v. LAKKUN SAKTHAL* 21 W. R., Cr., 56

13. ————— *Inconvenience to witnesses.—Question of identification.—Expense.*—At the trial of a person for an offence under section 411 of the Penal Code, the Court of Session, under section 33 of the Evidence Act, 1872, used against the accused the evidence of the owner of the property in respect of which the accused was charged and of his wife taken by commission during the enquiry, and the evidence of the servant of those persons taken at the enquiry, and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under section 508 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the enquiry were that the attendance of the witnesses could not be procured without an expense of Rs500, an amount which he considered unreasonable, that the witnesses would be inconvenienced, and that their evidence did not concern the accused personally, having reference only to the identification of the property in respect of which the accused was charged. *Held* that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under section 33 of the Evidence Act, and the question of identification was a most material one, and the evidence of the witnesses in question was of the utmost moment, the whole case resting on it; and as regards the ground of expense, it was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that the accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could he arrange for their cross-examination. *QUEEN-EMPERESS v. BURKS*

[I. L. R., 6 All., 224]

————— s. 34.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.

[I. L. R., 1 Bom., 610

23 W. R., Cr., 27

I. L. R., 10 Calc., 1024

See EVIDENCE—CIVIL CASES—JAMABANDI AND JAMA-WARIL-RAKI PAPERS.

[10 C. L. R., 545

22 W. R., 549

1. ————— s. 35.—*Public record.*—Section 35 of the Evidence Act, which provides “that any entry

EVIDENCE ACT (I OF 1872), s. 35—continued.

in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact” does not make the public book evidence to show that a particular entry has not been made in it. *IN THE MATTER OF JUGGUL LALL*

[7 C. L. R., 356]

2. ————— *Measurement papers prepared by ameen in partition proceedings.*—The measurement papers, prepared by a batwara ameen deputed by the Collector to make a partition, do not come within section 35 of the Evidence Act. *MOHI CHOWDHRY v. DEINO MISSERAIN* . 6 C. L. R., 139

3. ————— *Evidence of other mortgage than one sued on.—Statement of a survey officer as to entry as occupant how far admissible.*—Under section 35 of the Evidence Act I of 1872, a statement by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such entry as facts in another case. *GOVINDRAY DESHMUKH v. RAGHO DESHMUKH*

[I. L. R., 8 Bom., 543]

4. ————— *Land Registration Act (Bengal Act VII of 1876), s. 55.—Entry in register, Effect of.—Question of possession.*—Entries made under Bengal Act VII of 1876 by the Collector, recording the names of proprietors of revenue-paying estates, are not evidence, under section 35 of the Evidence Act, of the fact of proprietorship. That section relates to the class of cases where a public officer has to enter in a register or other book some actual fact which is known to him,—e.g., the fact of a death or a marriage. The entry by the Collector in the register under Bengal Act VII of 1876 is not, properly speaking, the entry of a fact. It is a statement that the person is entitled to the property; it is the record of a right, not of a fact. *Per GABRIEL, C. J.*—*Scoble*, that section 55 of Bengal Act VII of 1876 constitutes the Collector a competent Court under particular circumstances for determining as between two disputants the question of possession, and his recorded decision upon that question in the register might be evidence of the fact of possession as between those two parties. *Ram Bushan Makto v. Jobli Makto*, I. L. R., 6 Calc., 853, explained. *SARASWATI DAS v. DHANPAT SINGH*

[I. L. R., 9 Calc., 431; 12 C. L. R., 12]

5. ————— *Admission.—Statement in decrees.—Practice of Mofussil Courts.*—In a suit for possession of a fishery, the plaintiff sought to put in evidence an admission alleged to have been made in the year 1818 by the defendant's predecessor in title in a written statement in a former suit. The only evidence of the admission was that contained in the decree in the former suit, the ordinary part of which was prefaced with a short statement of the pleadings in the suit. Under the old practice of Mofussil Courts, it was the duty of the Court to enter in the decree an abstract of the pleadings in each case. *Held* that the statement in the decree was evidence of the admission under section 35 of the Evidence Act (Act I of 1872). *Lekraj Kuar v. Malpal Singh*, I. L. R.,

EVIDENCE ACT (I OF 1872), s. 35—continued.

5 Cal., 744, referred to. **PARBUTY DASSI v. PURNO CHUNDER SINGH**. I L. R., 9 Cal., 596

6. ——— and s. 48.—*Proof of custom.—Admissibility of village wajib-ul-ur.*—*Held*, on the question whether there did or did not exist a custom in the Bahralia clan in Oudh excluding daughters from inheriting, that the wajib-ul-ur of a mouza in the taluqa, stating the custom of the Bahralia clan as to inheritance, had been properly received in evidence under section 35 of the Evidence Act, 1872. Further, that this custom was a usage of the kind which Regulation VII of 1822 required officers to ascertain and record; and that it was no valid objection that this wajib-ul-ur had been prepared and attested by officers subordinate to the settlement officer. *Semle*.—That had it been the case that these papers were not to be treated as records describing a custom, but as recording only the opinions of those likely to know it, the 48th section of the Act would have made them admissible. **LITRAJ KUAR v. MAHPAL SINGH RAGHURAM KUAR v. MAHPAL SINGH**

[I L. R., 5 Cal., 744
6 C. L. R., 593
L. R., 7 L. A., 63

——— s. 40, 41, & 43.

See RES JUDICATA—ESTOPPEL BY JUDGMENTS. I L. R., 6 Cal., 171
I L. R., 3 Bom., 3

——— s. 43.

See RES JUDICATA—ESTOPPEL BY JUDGMENTS. I L. R., 3 Bom., 3

——— s. 43.

See EVIDENCE—CIVIL CASES—DECREES—JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—DECREES NOT INTER PARTES. 23 W. R., 365

——— s. 44.

See FRAUD—EFFECT OF FRAUD. [I L. R., 6 Bom., 703
I L. R., 12 Cal., 156

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES. [I L. R., 6 Bom., 703

——— s. 43.

See s. 35. I L. R., 5 Cal., 744

——— s. 50.

See ADULTERY. I L. R., 5 Cal., 596
[I L. R., 5 All., 238

——— s. 54.

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS. [I L. R., 5 Cal., 763

——— s. 57.

See RELIGION, OFFENCES RELATING TO— [I L. R., 7 All., 461

EVIDENCE ACT (I OF 1872)—continued.

——— s. 57, 60.

See EVIDENCE—CRIMINAL CASES—TEXT-BOOKS. 12 C. L. R., 86
[I L. R., 10 Cal., 140

——— s. 60.

See EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE. I L. R., 5 Mad., 239

1. ——— s. 60 and 67.—*Proof of execution of deed*.—To prove the execution of a bill of sale executed in their favour by the plaintiff's father, the defendants called a kazi, who deposed that the vendor came before him, accompanied by witnesses, and acknowledged the execution of the deed, which was then registered. The lower Appellate Court found it was sufficiently proved. On special appeal to the High Court it was contended that the execution was not sufficiently proved under section 67, Act I of 1872. *Held* the proof of execution was sufficient; direct evidence of the handwriting of the executant was not necessary under section 67. It was not intended by section 60 to exclude circumstantial evidence of things which can be seen, heard, or felt. **NARL KANTO FUNDIT v. JUGGOBUNDGO GHOSH** [12 B. L. R., Ap., 18

2. ——— *Writer of document and subscribing witness*.—The Evidence Act does not require the writer of a document to be examined as a witness, nor does section 67 of that Act require the subscribing witnesses to a document to be produced. **ABDOOL ALI v. ABDOOL RAHMAN**. 21 W. R., 429

——— s. 63.

See EVIDENCE—CIVIL CASES—COPIES OF DOCUMENTS, &c. [I L. R., 7 Bom., 139
I L. R., 7 All., 733

See REMAND—GROUND FOR REMAND. [24 W. R., 232

——— s. 65.

See s. 90. I L. R., 5 Cal., 896

See CONFESSION—CONFESSIONS TO MAGISTRATE. I L. R., 9 Mad., 224

See CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE.

——— s. 66.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—NON-PRODUCTION FOR OTHER CAUSES. I L. R., 2 Mad., 295

——— s. 67.

See ss. 60 AND 67. [12 B. L. R., Ap., 18
21 W. R., 429

——— s. 73.—*Proof of signature*.—Where certain ryots swore that they got their pottahs from the hands of the person who professed to sign them, this was held under the Evidence Act, section 73, as

EVIDENCE ACT (I OF 1872), s. 73—continued.

proving to the satisfaction of the Court that the signatures were those of the lessor. **TARA PRESHAD TANGHER v. LUKHEN NARAIN PAURAL** . 21 W. R., 6

1. ——— s. 74.—*Letters between district authorities.*—Letters between district authorities are public documents forming a record of the acts of public authorities, and as such admissible as evidence under Act I of 1872, section 74. **PRITHEE SINGH v. COURT OF WARDS** . 23 W. R., 272

2. ——— *Compromise of case.*—*Public record.*—*Proof by office copy.*—Where a suit is compromised, and a petition is presented in the usual way, and the Court makes an order confirming the agreement which, with the order, as well as the agreement and power-of-attorney, are all entered upon the record, these papers become as much a part of the record in the suit as if the case had been tried and judgment given between the parties in the ordinary way; and that record is a public document and may be proved by an office copy. **BHAGAIN MEGH RANER KONE v. GOOROO PRESHAD SINGH** . 25 W. R., 68

3. ——— *Public document.*—*Jamabandi prepared by Collector under Beng. Reg. VII of 1822.*—*Consent, proof of.*—A jamabandi prepared by a Deputy Collector, while engaged in the settlement of land under Regulation VII of 1822, is a "public document" within the meaning of section 74 of the Evidence Act. It is not necessary to show that, at the time when such document was prepared, a ryot affected by its provisions was a consenting party to the terms therein specified. **TARU PATUR v. ABINASH CHUNDER DUTT** . I. L. R., 4 Cal., 76

4. ——— *Board of Trade certificate.*—*Public document.*—A certificate granted by the Board of Trade is not a "public document" within the meaning of section 74 of the Evidence Act. **IN THE MATTER OF A COLLISION BETWEEN "AYA" AND "BRENNILDA"**

[I. L. R., 5 Cal., 568: 5 C. L. R., 331]

5. ——— *Public documents.*—*Record of measurement.*—In a suit to obtain possession, under a title acquired by purchase at an auction, of certain lands, together with meane profits, upon setting aside an alleged taluqa etnami right claimed by the defendants, the defendants, in support of their claim, produced certain documents purporting to be abstracted from, or copies of, Government measurement chittas, dated Mughi 1126-27 (1764). These documents were produced from the Collectorate, but there was nothing to show that they were the record of measurements made by any Government officer.—*Held* that they were not "public documents" within the meaning of section 74 of the Evidence Act. **NITYANUND ROY v. ABDAR RAHEEM**

[I. L. R., 7 Cal., 76]

6. ——— and s. 77.—*Proceedings between the same parties in another suit.*—*Public documents.*—B. instituted a suit in the Court of the Munsif of the 24-Pergunnahs against A. on account of an alleged trespass to a drain which B. then alleged to be his property; that suit was dismissed on the ground that

EVIDENCE ACT (I OF 1872), s. 74 and s. 77—continued.

B. had not proved his title to the drain in question. In a suit arising out of an alleged trespass to the same drain brought by A. against B., in which A. stated it was his property, certified copies of the plaint, the defendant's written statement, and the decrees in the former suit were produced; and it was contended they were public documents, and admissible in evidence under sections 74 and 77 of the Evidence Act. The Court admitted the plaint and rejected the written statement. **MAHOMED SHAHABODDIN v. WEDGEBERRY** . 10 B. L. R., Ap., 31

— s. 77.

See s. 74 . . . 10 B. L. R., Ap., 31

— s. 80.

See **CONFESSION—CONFESSIONS TO MAGISTRATE** . I. L. R., 9 Mad., 224

See **CRIMINAL PROCEDURE CODE, 1882, s. 288** . . . 21 W. R., Cr., 5

See **EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—MUTATION PROCEEDINGS** . . . 25 W. R., 124

See **EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.**

[22 W. R., Cr., 2]

I. L. R., 11 Cal., 580

1. ——— s. 83.—*Measurement chittas.*—Chittas made by Government for its own private use are nothing more than documents prepared for the information of the Collector, and are not evidence against private persons for the purpose of proving that the lands described therein are or are not of a particular character or tenure. **RAM CHUNDER SAO v. BUNSEDDHUR NAIK** . I. L. R., 9 Cal., 741

2. ——— *Presumption as to accuracy of Government survey map.*—*Subsequent Government survey map.*—The presumption under the Evidence Act, in regard to the accuracy of a map made under the authority of Government, is in no way affected by the fact that such map has been superseded by a later survey map made under the same authority, and by an order of the Board of Revenue. **JOGESSUR SINGH v. BYOUNT NATH DUTT**

[I. L. R., 5 Cal., 822: 6 C. L. R., 519]

3. ——— *Map.*—*Evidence Act, s. 18.*—*Presumption as to accuracy.*—A map prepared by an officer of Government while in charge of a khas mehal, Government being at the time in possession of the mehal merely as a private proprietor, is not a map purporting to have been made under the authority of Government within the meaning of section 83 of the Evidence Act (I of 1872), the accuracy of which is to be presumed; but such a map may be admitted as evidence under section 18 of that Act. **JUNMAJORY MULLICK v. DWARKANATH MYTHER**

[I. L. R., 5 Cal., 287: 4 C. L. R., 574]

4. ——— *Thakbust map.*—A thakbust map must be presumed to be accurate under this section. **NIAMUTULLAH KHADUN v. HIMMUT ALI KHADUN** . . . 22 W. R., 519

EVIDENCE ACT (I OF 1872), s. 88—continued.

5. ————— *Thakbust map, Accuracy of.*—Evidence of making of map in presence of parties.—The accuracy of a thakbust ameen's map, which is assumed in the Evidence Act, means accuracy of drawing and correctness of measurement, but certainly does not refer to the laying down of boundaries according to the rights of parties. To be binding on the parties to a suit such a map must be supported by evidence that it was drawn in their presence or in that of their agents. **OMIETA LALL CHOWDERY v. KALIE PERSHAD SHAHA**

[25 W. R., 179]

1. ————— s. 90.—*Ancient document.*—Proof of proper custody.—When a document is so old that the parties to it and the witnesses are in all probability dead, and evidence cannot be produced to prove the factum of its execution, the rule in England, as well as in this country, is to compel the party who relies upon the document to show that it comes from the custody in which it would naturally be expected to reside, were it a real and authentic document. **SREEN-KANT BHUTTACHARJEE v. RAJNARAIN CHATTERJEE**

[10 W. R., 1]

2. ————— *Document 80 years old.*—Proper custody.—A document 80 years old does not prove itself, in the absence of evidence, that it has come from the proper custody. **GURU DAS DRY v. SAMBHU NATH CHUCKERBUTTY**

[3 B. L. R., A. C., 258]

3. ————— *Document 80 years old.*—Presumption.—In applying the presumption allowed by section 90 of the Evidence Act, the period of 80 years is to be reckoned, not from the date upon which the document is filed in Court, but from the date on which, it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof. **MINNU SIKKAR v. RHEDOY NATH ROY**

[6 C. L. R., 135]

4. ————— *Document 80 years old.*—A document more than 80 years old, although not requiring to be formally attested by the witnesses who attended at its execution, must be shown to have come from the custody of the person who would have been the proper person to keep it. **THAKOOR PERSHAD v. BASHMUTTY KORB**

24 W. R., 428

5. ————— *Document of ancient date.*—Proof of custody.—Where a party offers documents of such an age as to be incapable of being proved by direct evidence, he is bound to prove their custody. **GOUR PARAY v. WOOMA SOONDUREN DEBIA**

12 W. R., 472

FUREEDUNNISSA v. RAM ONOGRA SINGH

[21 W. R., 19]

And, if possible, acts done according to their terms
GRANT v. BYJNATH TEWARRIE

21 W. R., 279

6. ————— *Document 80 years old.*—The rule regarding the proof of documents more than 80 years old is that they need not be proved, provided they have been so acted upon or brought from such a place as to offer a reasonable presump-

EVIDENCE ACT (I OF 1872), s. 90—continued.

tion that they were honestly and fairly obtained and preserved for use, and are free from suspicion of dishonesty. **HARI DHANGAR v. BIRU DARSA**

[5 Bom., A. C., 135]

7. ————— *Document 80 years old.*—Proof of custody.—With regard to the proof of ancient documents the proper rule is, that if they are more than 80 years old they need not be proved, provided they have been so acted upon or brought from such a place as to offer reasonable presumption that they were honestly and fairly obtained and preserved for use, and are free from suspicion of dishonesty. Application of this rule considered. **VITHAL MAHADEB v. DAUD VALAD MUHAMMED HUSEIN**

6 Bom., A. C., 80

8. ————— *Ancient document.*—Evidence of proper custody.—Although ancient documents are admissible in evidence on proof that they have been produced from proper custody, their value as evidence when admitted must depend in each case upon the corroboration derivable from external circumstances, e.g., from the documents having been produced on previous occasions upon which they would naturally have been produced if in existence at the time, or from acts having been done under them. **ROIKUNT NATH KUNDU v. LUKHUN MAJHI**

[9 C. L. R., 425]

9. ————— *Documents more than 80 years old.*—Where the Judge is satisfied that a document is more than 80 years old and that it has come from proper custody, he may as a rule dispense with proof of its execution. **LALDAS RAMDAS v. KASHIRAM**

4 Bom., A. C., 60

10. ————— *Document of ancient date.*—Where a document is found on independent evidence to have been in existence long prior to the institution of the suit, and also to be genuine, it is not necessary to insist on the testimony of subscribing witnesses. **MAHOMED FRYDE SIEDAR v. OZBOODREH**

10 W. R., 340

MOHESH ROY v. BOODHUN MAHTOON

[18 W. R., 315]

11. ————— *Ancient documents, Rule as to.*—The English rule that a document more than 80 years old, if free from suspicion of dishonesty, may be admitted as evidence without proof of the execution or writing, was held to be founded on a reason which had less weight in this country, where less credit should be given to ancient documents which are unsupported by any evidence that might free them from a suspicion of being false or fabricated. Even in England such evidence unsupported was held to be of very little weight. Accordingly it was not allowed to prevail here in a case in which there was other evidence inconsistent with the title which those documents professed to create. **PHOOL BIBEE v. GOUB SURUN DOSS**

18 W. R., 485

12. ————— *Document 80 years old.*—Proof of signature of.—A Court is not bound

EVIDENCE ACT (I OF 1872), s. 90—continued.

to accept as genuine the signature on a document upwards of 80 years old, even though it be produced from proper custody. Before accepting such document as proof of title, the Court must satisfy itself that the person who purports to have affixed his signature to the document was a person who at the time was entitled to grant such a document. **UGRAKANT CHOWDHRY v. HURRO CHUNDER SHICK-DAR** . . . I. L. R., 6 Cal., 209

13. ——— Document more than 80 years old.—Proof of execution.—Evidence of authority to sign on behalf of others.—The plaintiffs sued the defendants for enhancement of rent. The defendants resisted the claim, relying, *inter alia*, on a mukurrari pottah executed on 9th October 1832. This pottah purported to bear the seal of one of the then maliks of the lands, and also purported to be signed on behalf of all the maliks by A. Held that although the pottah might be an authentic document, it would not bind the maliks who did not affix their seals, nor those who claimed under them, unless it was shown that A. had a special authority to sign the names of such maliks to it, or a general authority to sign on their behalf documents of the same description as the pottah; and that until such proof was given, the document was not admissible in evidence. Held, further, the fact that the pottah was more than 80 years old gave rise to the presumption that the signature at the foot of it was in the handwriting of A., and that the pottah was executed by him; but that to make it evidence against the representatives of the maliks who had not executed it, the defendants should show that A. had authority to sign their names. **UBILACK RAI v. DALMIAL RAI** . . . I. L. R., 3 Cal., 557

14. ——— Legal presumption.—Previous production of such document.—No legal presumption can arise as to the genuineness of a document more than 80 years old, merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous. It must be shown that the document had been so filed in order to the adjudication of some question of which that Court had cognizance, and which had come under the cognizance of such Court. **GUDADHUR PAUL CHOWDHRY v. BHYSUB CHUNDER BHATTACHARJI** [I. L. R., 5 Cal., 918]

15. ——— Ancient document.—Evidence of proper custody.—To establish the authenticity of a document so old that the witnesses to its execution cannot reasonably be expected to be in existence, it is not necessary to go behind the possession of the present owner. If the custody from which the document comes into Court has been and is the custody in which, judging from the purport of the document itself and the other circumstances of the case, it would naturally be expected to reside, then the document ought to be treated as authentic to such extent as to be admissible in evidence between the parties. **CHUNDER KANT MISTRAL v. BROJONATH BYSACK** . . . 13 W. R., 109

RAMDHUN GHOSH v. ESHAN CHUNDER GHOSH [17 W. R., 34]

EVIDENCE ACT (I OF 1872), s. 90—continued.

See **DEVASI GOYALI v. GODABHAI GODERHAI** [11 W. R., P. C., 35]

VENCATASWAR YELLIAFFAH NAIKA v. ALAGOO MOOTTOO SERVACAREN [4 W. R., P. C., 73; 8 Moore's I. A., 327]

16. ——— Old document.—Lease, Proof of authenticity of.—Possession.—Where a document which is not proved because of its great age, and of there being therefore no witnesses to prove it, is put forward as a document intended to operate as a *maurati* tenure, it is necessary, in order to establish its authenticity, to show that it was accompanied by possession. **BISHESHUR BHUTTACHARJEE v. LAMB** [21 W. R., 22]

17. ——— Ancient document, Custody of.—Where a document purported to be 45 years old, and a mohurir swore to its having been in his custody as keeper of the plaintiff's records for the time of his service, the evidence was held to show (if credible) that the document had come from proper custody, within the meaning of Act I of 1872, section 90, and to require no direct evidence of its genuineness. **EKOOWERE SINGH ROY v. KYLASH CHUNDER MOOKERJEE** . . . 21 W. R., 45

18. ——— Documents 80 years old, their natural and proper custody.—Where a daughter professed to hold under a pottah more than 80 years old, in favour of her father, and was found to have been in possession of the land ever since her father's death for a period of 40 years without interruption on the part of her father's heirs,—Held that the daughter's custody of the pottah was a natural and proper custody within the meaning of section 90 of the Evidence Act. The rule laid down in section 90 as to proof of execution of documents 80 years old ought to be applied in this country with special care and caution. **THAILOKIA NATH NUNDI v. SHURRO CHUNGONI** . . . I. L. R., 11 Cal., 539

19. ——— Secondary evidence.—Document more than 80 years old.—Proof of execution.—Evidence Act, s. 65.—Secondary evidence of the contents of a document requiring execution, which can be shown to have been lost in proper custody, and to have been lost, and which is more than 80 years old, may be admitted under section 65, clause (c), and section 90, of the Evidence Act, without proof of the execution of the original. **KHETTER CHUNDER MOOKERJEE v. KHETTER PAUL SREESTRUTING** [I. L. R., 5 Cal., 886; 6 C. L. R., 189]

s. 91.

See **CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.**

See **EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.** . . . 23 W. R. Cr., 25
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See **EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.** [11 Bom., 120]

EVIDENCE ACT (I OF 1872), s. 91—continued.

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS.

[I. L. R., 12 Calc., 267]

See REGISTRATION ACT, 1877, s. 40.

[I. L. R., 1 All., 442
1 C. L. R., 542]

s. 92.

See BILL OF EXCHANGE.

[I. L. R., 3 Calc., 174]

See CASES UNDER EVIDENCE—PAROL EVIDENCE.

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . I. L. R., 5 Calc., 71

s. 105.

See PRIVATE DEFENCE, RIGHT OF—

[11 C. L. R., 232]

Onus probandi.—Proof of circumstances bringing offence under exception in Penal Code.—In all criminal cases tried in the mofussil it is incumbent on the accused, since the passing of the Evidence Act (I of 1872), to prove the existence (if any) of circumstances which bring the offence charged within the general or special exceptions or provisos contained in any part of the Penal Code or in any law defining such offence. *Query* as to the state of the law in this respect in the Presidency towns. IN THE MATTER OF PETITION OF SHIBO PRASAD PANDAH [I. L. R., 4 Calc., 124 : 3 C. L. R., 122]

s. 106.

See ONUS PROBANDI—PRE-EMPTION.

[I. L. R., 5 All., 184]

See ONUS PROBANDI—SALE FOR ARREARS OF RENT . . . 21 W. R., 397

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[21 W. R., 397]

ss. 107, 108.

See HINDU LAW—PRESUMPTION OF DEATH . . I. L. R., 8 All., 614

Missing person.—Presumption of death.—Sections 107 and 108 of the Evidence Act, taken together, do not lay down any rule as to the exact time of the death of a missing person. Whenever the question as to the exact time of death arises, it must be dealt with according to the evidence and circumstances of each case, when the death is alleged to have occurred at any time not affected by the presumption of law as to the seven years. DHARUF NATH v. GOBIND SARAN. GOBIND SARAN v. DHARUF NATH . . . I. L. R., 8 All., 614

s. 108.

See HINDU LAW—PRESUMPTION OF DEATH . . I. L. R., 1 All., 53

[I. L. R., 8 All., 614]

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[I. L. R., 7 All., 297]

EVIDENCE ACT (I OF 1872)—continued.**s. 110.**

See ONUS PROBANDI—MORTGAGE.

[I. L. R., 9 Bom., 137]

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE . . . 6 N. W., 36

I. L. R., 8 Calc., 759

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY . . . 5 C. L. R., 278

s. 113.

See CESSION OF BRITISH TERRITORY IN INDIA . . I. L. R., 1 Bom., 367

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See ACCOMPLICE . 19 W. R., Cr., 43, 46

[21 W. R., Cr., 69]

I. L. R., 1 Mad., 394

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS . . [I. L. R., 7 All., 738]

See ONUS PROBANDI—NOTICE.

[I. L. R., 13 Calc., 197]

See ROAD CASE ACT, s. 52.

[I. L. R., 13 Calc., 197]

s. 115.

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF—

[I. L. R., 2 All., 809]

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See ESTOPPEL—ESTOPPEL BY CONDUCT.

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[I. L. R., 7 All., 511, 878]

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See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[1 C. L. R., 528]

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[I. L. R., 2 Mad., 226]

I. L. R., 11 Cal., 519

s. 121.

See WITNESS—CRIMINAL CASES—PERSON COMPETENT TO BE WITNESS.

[I. L. R., 3 All., 573]

s. 126.

See PRIVILEGED COMMUNICATION.

[I. L. R., 3 Bom., 91]

EVIDENCE ACT (I OF 1872)—continued.

s. 132.—Answers criminating witnesses.—Voluntary statement.—Privilege of witness answering criminating question.—In a Small Cause suit under chapter XXXIX of the Code of Civil Procedure on a promissory note, which was alleged to have been executed jointly by G. and his son V., V. filed an affidavit in order to obtain leave to defend the suit, and, having obtained leave to defend, gave evidence at the trial on his own behalf. On a subsequent trial of V. for forgery of his father's signature to the same promissory note, the affidavit and deposition of V. in the Small Cause suit were admitted as evidence against V. *Held* by TURNER, C. J., INNES and KINDERSLEY, JJ., that both the affidavit and the deposition were properly admitted. By KERNAN and MUTTUSAMI AYYAR, JJ., that the affidavit was properly admitted, but not the deposition. *Per* TURNER, C. J., INNES and KINDERSLEY, JJ.—Where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a statement, if relevant, may be used against him on his trial on a criminal charge. If a witness does not desire to have his answers used against him on a subsequent criminal charge, he must object to answer, although he may know beforehand that such objection, if the answer is relevant, is perfectly futile, so far as his duty to answer is concerned, and must be overruled. *QUEEN v. GOPAL DASS*

[I. L. R., 3 Mad., 271]

s. 133.*See* ACCOMPLICE . I. L. R., 1 Mad., 304**s. 136.***See* WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—EXAMINATION BY COURT. I. L. R., 6 Cal., 279**s. 145.***See* EVIDENCE—CIVIL CASES—ACCOUNT AND ACCOUNT BOOKS.

[I. L. R., 4 Bom., 576]

s. 154.*See* WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . I. L. R., 13 Cal., 53**s. 155.***See* EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.

[11 Bom., 120]

s. 157.*See* EVIDENCE—CRIMINAL CASES—DEPOSITIONS . I. L. R., 8 All., 672**s. 159.***See* EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.

[11 Bom., 120]

*Bonds destroyed by fire.—Refreshing memory of witness.—The plaints and re-***EVIDENCE ACT (I OF 1872), s. 159—continued.**

cords in a number of suits upon bonds instituted by the same plaintiff against different persons were destroyed by fire. The suits were re-instituted, and duplicate copies of the plaints were filed. The only evidence of the contents of the bonds, from which the plaints were prepared, consisted of a register kept by the plaintiff's gomastahs of the names of the executors of the bonds, the matter in respect of which the bonds had been given, the amounts due hereunder, and the names of the attesting witnesses. From this register the duplicate plaints had been prepared. *Held*, that though the register was not secondary evidence of the contents of the bonds, yet it was a document which might be referred to by a witness for the purpose of refreshing his memory, under section 159 of the Evidence Act. *TARUOK NATH MULICK v. JHAMAT NOSTA* . I. L. R., 5 Cal., 353

s. 165.*See* PENAL CODE, s. 179.

[I. L. R., 10 Bom., 185]

s. 167.*See* CONFESSION—CONFESSIONS TO POLICE OFFICERS . I. L. R., 1 Cal., 207

[I. L. R., 2 Bom., 61]

See CRIMINAL PROCEEDINGS.

[I. L. R., 8 Cal., 739]

See WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES.

[6 Moore's I. A., 232]

1. ——— *Civil and Criminal Cases.*—Section 167 of the Evidence Act applies as well to criminal as to civil cases. *QUEEN v. HURRIBOL CHUNDER GHOSH*

[I. L. R., 1 Cal., 207 : 25 W. R., Cr., 36]

2. ——— It applies to criminal trials by jury in the High Court. *REG. v. NAORAJI DADABHAI* 9 Bom., 358

3. ——— *Document improperly admitted in evidence.*—Where a copy of a deposition is improperly admitted, such admission is not ground of itself for a new trial, if, independently of the evidence so admitted, there is sufficient evidence to justify the decision. *WOOMA KANT BUKSHI v. GUNGA NARAIN CHOWDHRY* 20 W. R., 385

"EX A CERTAIN SHIP," MEANING OF—*See* CONTRACT—CONSTRUCTION OF CONTRACTS . 8 B. L. R., O. C., 103**EXAMINATION DE HENE ESSE.***See* COMMISSION—CIVIL CASES . COR., 7

[5 B. L. R., 252]

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EXAMINATION OF ACCUSED PERSON.*See* CASES UNDER EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

EXAMINATION OF ACCUSED PERSON—continued.

1. ——— Discretion of Magistrate in examining accused.—*Evidence insufficient to found charge.*—It is a matter of discretion for the Magistrate whether, during the enquiry before him, it is right and proper that the accused should be examined or not. But it is undesirable that the accused should be examined by the Magistrate when he is satisfied that the evidence adduced by the prosecution does not disclose any proper subject of criminal charge against him. *IN THE MATTER OF SHAMA SANKAR BISWAS* . . . 1 B. L. R., S. N., 16

2. ——— Criminal Procedure Code, 1861, s. 202.—The discretion of a Magistrate, under section 202, Code of Criminal Procedure, to ask questions of an accused, is entirely unfettered, though an examination under that section should not be of an inquisitorial nature, and a Magistrate should inform the accused that he is not bound to answer. Answers to questions under that section are admissible in evidence, even if the Magistrate has omitted to warn the accused he need not answer. *QUEEN v. DINDO ROY* . . . 16 W. R., Cr., 21

3. ——— Refusal to hear statement or examine accused.—*Power of Court.*—It is not competent to the Court in a criminal trial to refuse to allow the accused to make a statement, or an offer to be examined. *IN THE MATTER OF ABDUL GUYFOOR* . . . 10 C. L. R., 54

4. ——— Committal without examining accused.—*Power of Court.*—It is not illegal for a Magistrate to commit an accused person to the sessions without examining him or his witnesses. *QUEEN v. HURNATH ROY* . . . 2 W. R., Cr., 50

5. ——— Tender of written defence.—*Oral examination.*—*Criminal Procedure Code, 1861, s. XV.*—When a written defence is tendered in a case tried under chapter XV of the Code of Criminal Procedure, the Magistrate is not bound to take down the defence of the accused by personally examining him. *DILA MONDUL v. KALLY SAHAR* [16 W. R., Cr., 63

6. ——— Obligation of accused to give account of his movements at alleged time of offence.—An accused person is not bound to account for his movements at or about the time an offence was committed, unless there has been given legal evidence sufficient *prima facie* to convict him of the offence. *QUEEN-EMPERESS v. BEPIN BISWAS* [1 L. R., 10 Calo., 970

7. ——— Object of examination of prisoner.—The discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, not to drive him to make self-criminating statements. *EX PARTE VIRABUDDHA GAUD* [1 Mad., 199

8. ——— Examination by Sessions Judge.—*Criminal Procedure Code, 1872, s. 250.*—Under section 250 of the Code of Criminal Procedure, the Court may from time to time, at any stage of the

EXAMINATION OF ACCUSED PERSON.—Examination of Sessions Judge—continued.

case, examine the accused personally; but the Court is not competent to subject the accused to severe cross-examination. The discretion given by the law is not to be used for the purpose of driving the accused to make statements criminating himself, but only for the purpose of ascertaining from the accused how he is able to meet facts standing in evidence against him, so that these facts should not stand against him unexplained. *Virabuddha Gaud, 1 Mad., 199*, followed. *IN THE MATTER OF CHINIRASH GHOSH* [1 C. L. R., 436

9. ——— Cross-examination.—*Criminal Procedure Code, 1872, s. 250.*—The authority given to a Sessions Court to examine an accused does not contemplate the cross-examination of such accused, nor can the Judge endeavour, by a series of searching questions, to force the accused to criminate himself. The real object involved in the power given to the Court under section 250 of the Code of Criminal Procedure is to enable the Judge to ascertain from time to time from the accused (especially if he be undefended) such explanation as he may desire to give regarding any statement made by the witnesses, or, at the close of the case for the prosecution, to elicit from the accused how he proposes to meet such portions of the evidence as, in the opinion of the Court, implicate the accused in the commission of the offence with which he stands charged. *HOSSEIN BUKSH v. EMPRESS* [1 L. R., 6 Calo., 98; 6 C. L. R., 521

10. ——— Cross-examination by Court.—*Criminal Procedure Code, 1872, s. 250.*—It is improper for the Court to cross-examine a prisoner with the apparent object of convicting him out of his own mouth of false statements, and so making him prejudice himself in respect of the matter with which he is charged. *EMPERESS v. BEHARI LAL BOSH* [6 C. L. R., 431

11. ——— Mode of recording examination.—*Certificate of Magistrate.*—*Criminal Procedure Code, 1872, s. 346.*—In recording the examinations of accused persons under section 346 of the Code of Criminal Procedure in the language in which they are given, a Magistrate need not take down the examination in his own hand; it is enough that he append a certificate that the examination was conducted in his presence, and contains accurately all that was stated by the accused person. *QUEEN v. LUCKY NARAIN DUTT* . . . 20 W. R., Cr., 50

12. ——— *Act XXV of 1861, s. 205.—Act X of 1872, s. 346.—Attestation of Magistrate.*—Under section 205 of the Criminal Procedure Code, it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused and every answer given by him, and that he had had liberty to add to or explain his answers. Attestation at the foot of the examination is sufficient; but in case of doubt, oral evidence should be admitted

EXAMINATION OF ACCUSED PERSON.—Mode of recording examination—*continued*.

to prove the regularity of the proceedings. *QUEEN v. GOSITO LAL DUTT*

[7 B. L. R., Ap., 63: 15 W. R., Cr., 68

13. ———— *Certificate under Criminal Procedure Code, 1861, s. 205.—Attestation of Magistrate.*—The certificate required under section 205, Code of Criminal Procedure, need not be in the handwriting of the presiding officer, but may be under his hand only,—i.e., signed by him. *QUEEN v. REZZA HOSSEIN*

See *QUEEN v. NIBUNI* . . . 7 W. R., Cr., 49

QUEEN v. BHENBENKE . . . 4 N. W., 16

14. ———— *Attestation of Magistrate.—Proof of signature.*—Where a jury is satisfied as to the genuineness of an attestation by a Magistrate, it is unnecessary to call the Magistrate to swear to his signature. *QUEEN v. REZZA HOSSEIN*

[8 W. R., Cr., 55

EXCEPTIONS IN PENAL CODE.

See *CHARGE—FORM OF CHARGE—GENERAL CASES* . . . I. L. R., 4 Calc., 124

See *EVIDENCE ACT, 1872, s. 105.*
[I. L. R., 4 Calc., 124

EXCISE ACT, 1856.

See *ACT XXI OF 1856.*

See *BENGAL EXCISE ACT, 1878.*

— (X OF 1871).

1. ———— ss. 19, 63.—*Illicit possession of liquor.—Guilty knowledge.—Presumption.*—*Act XI of 1870, s. 2.—“Ser.”—Held*, in a prosecution under sections 19 and 63 of Act X of 1871, that the definition of “ser” given in section 2 of Act XI of 1870 was not so intelligible and clear as to be capable of general application, and that it did not supersede the local customary weight of a ser. *Held*, therefore, the local customary weight of a ser being 95 tolahs (the Government ser weighing 80 tolahs), and the accused having been found in possession of 96 tolahs only, that the excess of one tolah over the local weight was not such as to warrant the presumption of the guilt of the accused. *EMPRESS v. HAIR RAM. EMPRESS v. CHEDA KHAN*

[I. L. R., 3 All., 404

2. ———— ss. 32, 62.—*Illicit sale of liquor.—License.—Conviction, Validity of.*—On the 30th October 1877, N. was granted a license for the sale of spirituous and fermented liquors by retail terminating on the 31st December 1877. On the 11th January 1878, such license was renewed by the Collector for a period terminating on the 31st March 1878. On the 14th January 1878, N.’s servant was convicted, under section 62 of Act X of 1871, of the illicit sale of liquors between the 1st January 1878 and 10th January 1878, both days inclusive. *Held* that the renewal of N.’s license was a condonation of

EXCISE ACT, 1856 (X OF 1871), ss. 32, 62—*continued*.

the offence, and the conviction was bad. *Semble*,—That inasmuch as N. had given no notice of his intention not to renew the license, nor had the Collector recalled it, the license remained in force, and the conviction was consequently bad, under section 32 of Act X of 1871. *EMPRESS v. SEYMOUR*

[I. L. R., 1 All., 630

3. ———— *Illicit sale of liquor.—License.*—A. held a license for the sale of spirituous and fermented liquors by retail for a period of three months terminating on the 31st December 1877. Prior to the 8th January 1878, no notice was given by A. of her intention not to renew the license, nor had the license been recalled by the Collector. Between the 1st January 1878 and the 8th January 1878, both days inclusive, A.’s servants sold spirituous and fermented liquors by retail. On these facts A.’s servants were convicted, under section 62 of Act X of 1871, of the illicit sale of liquor. *Held*, following the opinion expressed in *Empress v. Seymour*, I. L. R., 1 All., 630, that the convictions were bad, as A.’s license, under the provisions of section 32 of that Act, remained in force until she gave notice of her intention not to renew it or it was recalled by the Collector. The principle of the decision in *Empress v. Seymour* dissented from. A. should have been prosecuted under section 57 of the Excise Act for not paying her monthly fee in advance. *EMPRESS v. MAHINDRA LAL*

I. L. R., 1 All., 638

4. ———— s. 62.—*Chapter VI.—Illicit sale of liquor.—License.*—D. was the holder of a license for the sale of spirituous and fermented liquors by retail for a period terminating on the 31st December 1877. On the 10th January 1878, his license not having been renewed by the Collector, D. sold certain spirits by retail. On these facts he was convicted of the illicit sale of liquor. Subsequently to his conviction his license was renewed. *Held* that, under such circumstances, his conviction was good. *EMPRESS v. SEYMOUR*, I. L. R., 1 All., 630, distinguished. *EMPRESS v. DEHARAM DAS*

I. L. R., 1 All., 635

EXCOMMUNICATION BY ROMAN CATHOLIC PRIEST.

See *CRIMINAL INTIMIDATION.*

[I. L. R., 8 Mad., 140

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2. APPLICATION FOR EXECUTION, AND POWERS OF COURT . . . 1864
3. ORDERS AND DECREES OF PRIVY COUNCIL . . . 1869
4. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW . . . 1873
5. DECREES UNDER RENT LAW . . . 1875
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[I. L. R., 1 All., 686]

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———— Land taken in excess in—

See CIVIL PROCEDURE CODE, 1882, s. 244

—QUESTION IN EXECUTION OF DECREE.
[12 B. L. R., 201, 208, note, 207, note]

———— Notice of—

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—NOTICE OF EXECUTION.

———— Order passed in—

See CASES UNDER APPEAL—EXECUTION OF DECREES.

See CASES UNDER APPEAL—ORDERS.

———— Stay of—

See CASES UNDER APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

See BENGAL RENT ACT, 1869, s. 52.

[10 B. L. R., Ap., 2
18 W. R., 412, 413, note
Marsh., 417
17 W. R., 463
22 W. R., 460
I. L. R., 5 Calc., 906
I. L. R., 7 Calc., 568]

EXECUTION OF DECREE—continued.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.

[I. L. R., 4 Calc., 880
I. L. R., 5 Calc., 86]

See CASES UNDER INJUNCTION—UNDER CIVIL PROCEDURE CODE.

———— Of High Court on Appeal from Mofussil.

See CASES UNDER LIMITATION ACT, 1877, ART. 180 (1859, s. 19).

———— Of Privy Council.

See LIMITATION ACT, 1877, ART. 180 (1859, s. 19). B. L. R., Sup. Vol., 508
[I. L. R., 3 Calc., 218]

1. EFFECT OF REPEAL OF ACT PENDING SUIT.

1. ——— Execution proceedings in suit commenced before Act VIII of 1859.—Act VII of 1855.—Proceedings in execution of a decree in a suit begun under the old procedure were regulated by Act VII of 1855. IN RE SUMBHOOCUNDER HALDAE . . . Bourke, O. C., 59

2. ——— Effect of repeal of Act VIII of 1859.—Imprisonment for debt.—Civil Procedure Code, 1877, ss. 8 and 342.—Act I of 1868 (General Clauses Consolidation Act), s. 6.—Procedure.—Held by a majority of the Full Bench (SARGENT and BAYLEY, J.J., dissenting), that a judgment-debtor, imprisoned in satisfaction of the decree against him under Act VIII of 1859, was not entitled, under Act X of 1877, to be released on the coming into operation of the latter Act, if he had then been imprisoned for more than six months but less than two years. *Per* WHETSTOFF, C. J.—The judgment-creditor had, under Act VIII of 1859, the right (subject to be divested only under the circumstances stated) to have such judgment-debtor as the above detained in custody for two years, unless he in the meantime fully satisfied the decree. Chapter XIX of Act X of 1877, sub-division I, is essentially prospective throughout. Section 342 must, therefore, be construed as relating only to future imprisonment, consequent on arrests to be made under Act X of 1877. There is not in chapter XIX of that Act any trace of an intention on the part of the Legislature to deal with imprisonment commenced before the coming into force of the Act. Notwithstanding the repeal of Act VIII of 1859 by Act X of 1877, Act I of 1868, section 6, saves the committal under Act VIII of 1859, while that Act was in force, of a judgment-debtor, and also his consequent detention, commenced before the coming into force of Act X of 1877, if such detention is to be regarded as "procedure." The effect of Act I of 1868, section 6, and Act X of 1877, section 3, taken in combination, is to remove from the scope of the latter Act all proceedings after decree initiated before its coming into force, and then still pending, and to leave within its range all proceedings after decree initiated after its coming into force, though the suits and decrees, in and under which such

EXECUTION OF DECREE—continued.**1. EFFECT OF REPEAL OF ACT PENDING SUIT—continued.****Effect of repeal of Act VIII of 1859—continued.**

last-mentioned proceedings may be taken, were commenced and made before Act X of 1877 came into force. Therefore, assuming the rule as to the retroactive force of enactments relating to procedure laid down in *Wright v. Hale* (6 H. and N., 227) to apply, still section 342 of Act X of 1877 is not retrospective. But the question raised by the present application being one, not merely of procedure, but of the divestment of the existing right of the judgment-creditor, the presumption is (in the absence of express legislation or direct implication to the contrary) against giving retroactive force to section 342 of Act X of 1877. The cases relating to questions of mere procedure, whereby a retroactive force has been given to enactments, reviewed, and distinguished from those by which no such force was given, by reason of their raising questions which affected vested rights. *Per SARGENT, J.*—Sections 1 and 3 of Act X of 1877, taken in connection with Act I of 1868, section 6, show that, whilst saving all acts already done in execution of a decree in a suit instituted before Act X of 1877 came into force, all matters of procedure in execution subsequent to that date should be determined by the Act itself. The question raised by the present application is one of procedure, for the conditions and period under and for which the writ of imprisonment remains in force are as much matters relating to procedure as the issuing of the writ. Neither the wording of section 342 or the heading to chapter XIX of Act X of 1877 necessarily confine the "imprisonment" therein referred to to imprisonment commenced since that Act came into force. Though the judgment-creditor, by the arrest and imprisonment of his debtor, acquires a right different from the mere right of a plaintiff to have his cause of action tried according to a certain procedure, yet the rule that an Act is not to be construed retrospectively so as to defeat an existing right, is only a rule of construction, and must yield to the intention of the Legislature. It is difficult to suppose that the Legislature, when introducing a benign change into the law of debtor and creditor, in harmony with modern legislation, could have intended that two laws should continue for the next two years to operate concurrently, and that debtors imprisoned on the day before the latter Act came into force should be liable to be detained under the severer enactment. *Per BAYLEY, J.*—Cases on the construction of statutes relating to procedure reviewed. History of imprisonment for debt before recent legislation in England, and before the abolition of the Supreme Court in Bombay. The change effected by Act VIII of 1859 in the relative positions of debtor and creditor pointed out. *Coombe v. Caw* (13 B. L. R., 268) is inconsistent with the inviolable right claimed by the judgment-creditor to detain the judgment-debtor for two years. The sections of Act VIII of 1859, relating to imprisonment for debt and its duration, are concerned with procedure alone. The definitions of "decree" and "judgment-debtor" in Act X of 1877 are wide enough to include decrees passed, and judgment-debtors who have become such,

EXECUTION OF DECREE—continued.**1. EFFECT OF REPEAL OF ACT PENDING SUIT—continued.****Effect of repeal of Act VIII of 1859—continued.**

before the coming into force of the Act. Sections 341 and 342 of Act X of 1877 are applicable to proceedings pending when the Act came into force. The Legislature intended that the improvements introduced by the new Code should apply to suits brought under the old Code in those cases in which, consistently with the provisions of the new Code, they might, upon the ordinary principles of the interpretation of statutes, be clearly applicable. Section 3 of Act X of 1877 implies that the procedure after decree shall be according to the provisions of that Act. *Sumbhoo-chunder Halder* (1 B. & C., 69), and *Williams v. Smith* (4 H. and N. 559), distinguished. Section 6 of Act I of 1868 does not apply in the present case. When of two possible constructions one is in strict harmony with the improvements introduced by the Act, and with the spirit of modern legislation, while the other treats the point under consideration as not having been considered by the Legislature at all, the former is to be preferred. *Per GREEN, J.*—Apart from section 1 and the proviso to section 3, there is not in Act X of 1877 any provision as to its operation with regard to pending or past proceedings. Section 1 does not alter or abridge the legal effect, after 1st October 1877, of proceedings had and completed before that date; and in construing section 3 regard must be had to Act I of 1868, section 6, though the general rule of construction contained in the last-mentioned section must yield to the intention of the Legislature expressed in any subsequent Act. The proviso to section 3, coupled with section 1 of Act X of 1877, shows that the intention of the Legislature was that the repeal of the old Procedure Act was to affect, to some extent, the procedure, other than that prior to decree, in suits instituted before Act X of 1877 came into force. Ample effect would be given to this intention, while regard would still be had to section 6 of Act I of 1868, by holding that in all steps and proceedings, not prior to decree, had and taken after the 1st October 1877, in suits instituted before 1st October 1877, the provisions of the new Code are to be operative. Cases giving a retroactive force to enactments relating only to procedure, reviewed and distinguished. The right of an execution-creditor to detain his debtor till satisfaction of the decree for a period not exceeding two years, under a warrant issued before 1st October 1877 by virtue of Act VIII of 1859, is in no wise affected by the new Code coming into operation. *Per WEST, J.*—Cases on the retroactivity of enactments reviewed. Act VIII of 1859 must have clothed the Court's orders with an abiding validity, and the judgment-creditors with an abiding right, or else with none at all. The ministerial officer is to act on the order of the Court according to its original purport. The order, in the absence of an express provision to the contrary, retains its validity until it is withdrawn or varied. The new procedure, therefore, does not apply, whether as touching person or property, except, perhaps, in matters of mere administration or provisional arrangement. It cannot, at any rate, apply so as to deprive the creditor of his

EXECUTION OF DECREE—continued.**1. EFFECT OF REPEAL OF ACT PENDING SUIT—continued.****Effect of repeal of Act VIII of 1859—continued.**

right once acquired by the arrest of his judgment-debtor in execution. Any change in the relations of the parties can be made only in accordance with the later and existing law, but their previously subsisting relations continue to subsist as before. It is unlikely that the Legislature intended section 342 of Act X of 1877 to apply to cases of imprisonment other than those arising under that Act. Section 342 is simply a negative provision, and the affirmative provisions with which it is to be read are to be found in the same chapter of the Act, and these can only be applied to cases arising after the Act has come into force. The close of the litigious transaction, like that of a contractual one, fixes the rights of the parties according to the then existing law, and in principle there is no distinction between a construction prejudicial to the debtor and a construction prejudicial to the creditor. The imprisonment under Act VIII of 1859, as a "proceeding commenced," comes within the scope of section 6 of Act I of 1868. Act VIII of 1859, therefore, and not Act X of 1877, governs the enforcement of the judgment-creditor's decree throughout the proceedings consequent on his application for the debtor's imprisonment under the former Act. If the present application for discharge be a proceeding commenced since the new Act came into force, it is not integral with the previous proceedings in execution. If, on the other hand, it is integral with them, it is part of a proceeding commenced before the new Act came into force. In neither case can it bring within the new Act orders deriving their validity from another law. **IN THE MATTER OF THE PETITION OF RATANSI KALIANJI . I. L. R., 2 Bom., 148**

3. ————— Change of the law pending execution.—Civil Procedure Code, Act VIII of 1859 and Act X of 1877.—Order setting aside sale in execution of decree for irregularity.—Appeal.—Proceedings to execute a decree commenced when the former Code of Civil Procedure (Act VIII of 1859) was in force; but property belonging to the judgment-debtor was sold in pursuance of those proceedings on the 14th of November 1877 after the new Code (Act X of 1877) came into operation. Subsequently, at the instance of the applicant, the Court made an order setting aside the sale on the ground of irregularity. *Held* that this order was governed by the former Code, and was, consequently, not subject to appeal. **CHINTO JOSHI v. KRISHNAJI NARAYAN**

[I. L. R., 3 Bom., 214]

4. ————— Civil Procedure Code, 1877, s. 295.—Change of the law pending execution of decree.—Prior and subsequent attaching creditors.—General Clauses Act (I of 1868), s. 6.—A judgment-creditor, in execution of his decree, attached certain property belonging to his judgment-debtor while Act VIII of 1859 was in force. This property was ultimately sold on the 9th of January 1879, that is, after the new Code of Civil Procedure (Act X) of 1877 came into operation. Two days

EXECUTION OF DECREE—continued.**1. EFFECT OF REPEAL OF ACT PENDING SUIT—continued.****Effect of repeal of Act VIII of 1859—continued.**

before the sale another judgment-creditor applied to have his decree satisfied out of the same property by a rateable distribution of the proceeds which might be realised. *Held* that the prior attaching creditor, by his attachment under the Code of 1859, acquired, under section 270 of that Code, a right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law introduced by section 295 of the new Code of 1877. **NARANDAS v. BAI MANORHA**

[I. L. R., 3 Bom., 317]

5. ————— Change of law.—Effect on proceedings already commenced.—Civil Procedure Code, Act VIII of 1859, s. 216, and Act X of 1877, s. 266, cl. (g).—Attachment.—Political pension.—On the 28th of September 1877, i.e., three days before the new Code of Civil Procedure (Act X of 1877) came into operation, an application was made for the enforcement of a money decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under section 216 of the former Code (Act VIII of 1859) a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed, at which date the new Code had come into force, and contended that under section 266, clause (g), of the new Code, the pension was no longer attachable. *Held* that all proceedings commenced and pending when Act X of 1877 became law were, under the General Clauses Act (Act I of 1868), section 6, to be governed by the Code theretofore in force, the general rule of construction contained in that section not being affected or varied by sections 1 and 3 of Act X of 1877; and that a *bond fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment. **VIDYARAM v. CHANDRA SHEKHAR-AM**

[I. L. R., 4 Bom., 168]

6. ————— Civil Procedure Code Amendment Act (XII of 1879), s. 102.—Effect of an application for execution pending at date of its enactment.—Where an application to execute a decree was made under section 234 of the Code of Civil Procedure, 1877, before Act XII of 1879 (to amend it) was passed, but the application was not disposed of until after section 230 was altered by that Act,—*Held* that the rule in *Wright v. Hale*, 6 H. and N., 227, applied, and that the Act as amended was the law to be applied. **PAPABASTRIAL v. ANUN-TARAMA SASTRIAL**

[I. L. R., 3 Mad., 98]

2. APPLICATION FOR EXECUTION, AND POWERS OF COURT.

7. ————— Decree-holder, Meaning of.—A decree-holder within the meaning of the Civil Pro-

EXECUTION OF DECREE—continued.**2. APPLICATION FOR EXECUTION, AND POWERS OF COURT—continued.****Decree-holder, Meaning of—continued.**

cedure Code is the person whose name appears on the record as the person in whose favour the decree was made, or some person whom the Court has by order recognised as the decree-holder from the original plaintiff or his representatives. *PAUPAYYA v. NARASANSAN*. **I L. R., 2 Mad., 216**

8. ——— Proceeding in execution.—*Civil Procedure Code, 1877, s. 244.—Suit.—Semble.*—A proceeding in execution is a proceeding which terminates in a decree as defined by section 244 of the Civil Procedure Code (Act X of 1877), and is, therefore, a suit within the meaning of the Code. *MANJUNATH, BADRABHAT v. VENKATESH GOVIND* [**I L. R., 6 Bom., 54**]

9. ——— Application for execution, Irregularity in.—Procedure.—Notice of execution.—An application for execution was made by a mukhtar, and admitted by the Judge, who ordered a notice to issue to the judgment-debtor. *Held* that such application could not afterwards be set aside for irregularity, and that it was sufficient to keep the decree alive. *DHUNPUT SINGH v. LILANUND SINGH* [**2 B. L. R., Ap., 18: 11 W. R., 28**]

10. ——— Application for execution Contents of.—Practice.—An application for execution of a decree need not be accompanied by a copy of the decision of the first Court. *DHUNPUT SINGH v. LILANUND SINGH* [**2 B. L. R., Ap., 18: 11 W. R., 28**]

11. ——— Application for execution, Bar to.—Judgment of foreign Court.—Merger.—*Civil Procedure Code, 1877, s. 12.*—The judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original decree. *FAKURUDDIN MAHOMED ASSAN v. OFFICIAL TRUSTEE OF BENGAL* [**I L. R., 7 Calc., 82**]

12. ——— Court to which application should be made.—Civil Procedure Code, 1877-82, ss. 223, 649.—“Court which passed the decree.”—*Per GARTH, C. J.*—Section 649 of the Civil Procedure Code, as amended by Act XII of 1879, which explains the meaning of the expression the “Court which passed the decree,” does not *exclude* the Court which originally passed the decree as being a Court in which an application for execution should be made, but merely *includes* another Court. When, therefore, a Court which has passed a decree has ceased to have jurisdiction to execute it, the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which (if the suit wherein the decree was passed were instituted at the time of making application to execute it) would have jurisdiction to try the suit. *Per FIELD, J.*—A Court does not cease to be “the Court which passed the decree” merely by reason that the headquarters of such Court are removed to another place, or merely because the local

EXECUTION OF DECREE—continued.**2. APPLICATION FOR EXECUTION, AND POWERS OF COURT—continued.****Court to which application should be made—continued.**

limits of the jurisdiction of such Court are altered. *LACHMAN PUNDEH v. MADDAN MOHUN SHYE* [**I L. R., 6 Calc., 513: 7 C. L. R., 521**]

13. ——— Amendment of application.—*Civil Procedure Code, 1877, s. 245.—Time fixed by Court.—Jurisdiction.—Ultra vires.*—On the 9th of April 1880 *A.* applied for execution of a decree, which he had obtained against *B.* On the 20th of April 1880 the Judge of the Court, under the provisions of section 245 of the Code of Civil Procedure, ordered the application to be amended within seven days. This order was disobeyed, but no order rejecting the application was asked for or passed. On the 11th of May 1880 the applicant prayed for leave to make the amendment, which prayer was granted. *Held* that the order of the 11th of May 1880, granting leave to amend, was not *ultra vires* of the Judge, under the provisions of section 245 of the Code of Civil Procedure. *KAMINY MOHUN SOMODDAR v. GOPAL*. **I L. R., 8 Calc., 479: 10 C. L. R., 519**

14. ——— [Practice in execution by High Court of decree of another Court.]—The functions of the High Court, in respect of the execution of decrees of other Courts, are limited to effecting execution, and to matters arising out of the proceedings in execution. Where a decree more than a year old had been duly sent to the High Court for execution, an application for a rule to show cause why execution should not issue was refused: such application should be made to the Court which passed the decree. *JADU ROY v. FARRELL*. **6 B. L. R., Ap., 66**

15. ——— Functions of Court executing decree.—The functions of the Court executing a decree are judicial, and not merely ministerial. *GOBIND HORI WALEKAR v. SHIDRAM BIN SHIDMURTI*. **7 Bom., A. C., 37**

16. ——— Power of Court executing decree.—Objection to validity of amendment.—*Civil Procedure Code, s. 206.*—The Court, in a suit upon a bond, gave the plaintiff a decree, making a deduction from the amount claimed of a sum covered by a receipt produced by the defendant as evidence of part payment, and admitted to be genuine by the plaintiff. The decree was for a total amount of **Rs. 1,282**. Subsequently, on application by the decree-holder, and without giving notice to the judgment-debtor, the Court which passed the decree, purporting to act under section 206 of the Civil Procedure Code, altered the decree and made it for a sum of **Rs. 1,460**. The decree-holder took out execution, and the judgment-debtor objected that the decree was for **Rs. 1,282** and had been improperly altered. The Court executing the decree disallowed the objection, on the ground that it was not such as could be entertained in the execution department. *Held* that when a decree-holder executes his decree, a judgment-debtor is competent to object that the decree is not the decree of the Court fit to be executed, and therefore

EXECUTION OF DECREE—continued.**2. APPLICATION FOR EXECUTION, AND POWERS OF COURT—continued.****Power of Court executing decree—continued.**

not capable of execution; and that the judgment-debtor in this case could raise the question whether the decree, which was altered behind his back, was a valid decree and fit to be executed. **ABDOOL HAYAI KHAN v. CHUNIA KUAR** . I. L. R., 8 All., 377

17. — Questioning validity of decrees.—In executing a decree of a Court of competent jurisdiction, the Court executing it cannot question the validity of any portion of it. Its duties are only of a ministerial character. **AMBARAM HARIVALLABHDAS v. HIMAT SING KALIANJI** [2 Bom., 109; 2nd Ed., 103]

DABEE PERSHAD SING v. DELAWAR ALI
[13 W. R., 312]

18. — Authority to hear objections.—When the execution of a decree is made over to a Munsif's Court other than that which passed the decree, the Court executing the decree has authority to hear all objections, and to pass such orders as if it were executing its own decree; and an appeal will lie from any order so passed in the usual course to the Judge. **MUNGLE PERSHAD v. GUDOOBER SINGH** . . . 2 W. R., Mis., 17

19. — Adjustment of decrees.—A Court executing a decree is bound to have regard only to the decrees, and to any adjustment of such decrees which the parties may agree to bring to its notice. **JHUNDOO v. HIMMUT**
[3 N. W., 81]

20. — Civil Procedure Code, 1877, ss. 211 and 212 (1869, ss. 196 and 197).—The Court executing a decree is bound by the terms of the decree, and it is only in cases provided for by sections 211 and 212 of Act X of 1877, corresponding with sections 196 and 197 of Act VIII of 1869, that it is at liberty to determine the rights of the litigants in proceedings taken after decree. **RAM LAPIT RAM v. CHOOARAM. CHOOARAM v. RAM LAPIT RAM** . . . 4 C. L. R., 97

21. — Uncertain decrees.—*Power of Court of execution to take evidence to explain it.*—When the terms of a decree are uncertain, it is not competent to the Court of execution to make any enquiries by taking oral or documentary evidence to ascertain the meaning of such terms. **NUDDYAR CHAND SHAHA v. GOBIND CHUNDER GUHA** . . . I. L. R., 10 Calo., 1092

22. — Evidence in execution.—*Evidence to ascertain subject of decrees.*—In the execution of a decree for possession of land it was held the evidence of witnesses could be taken to ascertain the boundaries. **KALEE DABEE v. MODOO SOODUN CHOWDREY** . . . 16 W. R., 171

and to ascertain the subject on which the decree operates. **BHUGOBAT SINGH v. RAMADHIN SINGH**
[23 W. R., 380]

EXECUTION OF DECREE—continued.**2. APPLICATION FOR EXECUTION, AND POWERS OF COURT—continued.****Power of Court executing decree—continued.**

23. — Uncertain decrees.—*Evidence to explain decrees.*—When a decree is so uncertain that it is impossible to ascertain what is decreed, a plaintiff cannot be put into possession of any other thing by execution than that which the decree describes. Evidence cannot be given in the execution department to amend any uncertainty in the decree. The law allows certain matters to be ascertained in execution, but beyond those it is the duty of the Judge to take care that his decree is so precise that it is capable of execution, without leaving it to the Court of execution to decide what the Judge intended to decree. **DWARAKANATH HALDAR v. KAMALAKANTH HALDAR**
[3 B. L. R., Ap., 128; 12 W. R., 99]

24. — Decree not limiting amount of mesne profits.—A Court, in execution-proceedings, cannot look behind the decree when the decree does not limit the amount of wasilat to be awarded. **JADOOMONEY DABEE v. HAFEZ MAHOMED ALI KHAN** . . . I. L. R., 8 Calo., 295

25. — Refusal to execute decrees on equitable grounds.—*The Court executing a decree not competent to go behind it.*—The holders of a decree, made in 1866, against K. and certain other persons jointly, applied to recover mesne profits in execution thereof. K. paid the decree-holders the mesne profits claimed, and then sued his co-judgment-debtors for contribution, and in 1878 obtained a decree against them. Subsequently the holders of the decree of 1866 again applied to recover mesne profits in execution thereof, and in the proceedings which followed it was decided that mesne profits were not recoverable under the decree. After this K.'s representatives applied for execution of the decree of 1878. The lower Courts refused to execute the decree on the ground that, as under the decree of 1866, on which the decree of 1878 was based, mesne profits were not recoverable, it would not be equitable to allow a decree for contribution passed on a contrary supposition to be executed. Held that the lower Courts were not competent to go behind the decree of 1878, but must deal with it as it stood. **RAMPHAL RAI v. RAM BARAN RAI**
[I. L. R., 5 All., 53]

26. — Omission to specify mesne profits.—*Reference to plaint to see against whom relief can be given in execution.*—Where in a suit for possession and mesne profits no specific mention as to mesne profits is made in the decree (the decree merely declaring that the plaintiff's suit be decreed), the Court executing the decree must look to the plaint to see from whom the relief granted is to be obtained, and ought not to allow execution to issue against a *pro forma* defendant against whom no relief was claimed. **MONAJAN v. KASHI NATH PANDAY** . . . 5 C. L. R., 305

EXECUTION OF DECREE—continued.**2. APPLICATION FOR EXECUTION, AND POWERS OF COURT—continued.****Power of Court executing decree—continued.**

27. ———— Objections to sale of property.—The holder of a money decree, which declared the liability of certain mortgaged properties to be sold in satisfaction, petitioned the Court that as one of the properties (B.) had been sold by the judgment-debtor to H., it might be exempted from sale. The judgment-debtor admitted the sale, but subsequently made an application that B. might be sold first and the rest of the properties in succession. The Judge accordingly passed an order to that effect, to which H. was not a party. Subsequently H. petitioned the lower Court that B. might not be sold. Held it was open to that Court, as far as H. was concerned, to investigate his objections in the execution department and pass such orders as he might think fit. *LALLA HERRA LALL v. MONEE ROY*

[11 W. R., 202]

28. ———— Refusal of execution.—Irregularity in instituting suit.—It is not competent to a Court executing a decree to refuse execution in a case where no fraud is suggested, on the ground that the plaintiffs were allowed improperly to institute the suit. *SUBRAMANIAN PATTAR v. PANJAMMA KUNJAMMA*. I. L. R., 4 Mad., 324

29. ———— Decree against minor.—Question of minority.—Review.—In the execution of a decree passed against a minor the Court cannot enquire whether the minor was or was not properly represented in the suit in which the decree was given. It is bound to presume that the decree was rightly passed, and to execute it according to its terms. The minor's remedy is either to apply for a review of judgment, or to file a suit to procure an injunction to restrain the execution of the decree. *MAHOMED NOOR-ODDAH KHAN v. HARCHARAN RAI*

[6 N. W., 98]

30. ———— Costs.—A Court executing a decree has no jurisdiction to order a judgment-debtor to pay as costs any sum not mentioned in the decree which is in course of execution, or in any decree in force. *NABU KRISTO MOOKERJEE v. PARBUTTY CHURN BHUTTACHARJEE*

[13 W. R., 23]

NIL KOMUL ROY v. ROHINEE DOSSIA

[13 W. R., 330]

31. ———— Objection to decree for costs.—Where the lower Court has improperly awarded separate sets of costs to defendants who have severed in their defence, the attention of the Appellate Court should be drawn to this circumstance before the decree in appeal is passed. It is too late to raise the objection when this latter decree is being executed. *RAM CHUNDER SEN v. KOOMAR DOORGA NATH ROY*

2 C. L. R., 152

3. ORDERS AND DECREES OF PRIVY COUNCIL.

32. ———— Powers of Legislature.—Limitation affecting Privy Council decrees.—The

EXECUTION OF DECREE—continued.**2. ORDERS AND DECREES OF PRIVY COUNCIL—continued.****Powers of Legislature—continued.**

Legislature of this country has no power to pass any law limiting the period during which decrees of Her Majesty in Council may be executed. *ANAN-DAMAYI DAS v. PURNA CHANDRA RAI*

[B. L. R., Sup. Vol., 506: 6 W. R., Mis., 69]

33. ———— Order or declaration of Privy Council.—Mode of application for execution.—Act II of 1863, s. 14.—A party in a suit, desirous of executing an order or judgment of Her Majesty in Council, ought to apply, in conformity with section 14, Act II of 1863, to the Court from which the appeal was finally brought to the Queen in Council, to enforce and execute the decree of Her Majesty in Council; and it is the duty of such Court to give directions for executing the decree to the Court of first instance by which the suit was originally tried. A declaration of Her Majesty in Council must not be considered as not being equivalent to an order. When Her Majesty in Council does make a declaration, the form in which that declaration is conceived and the words in which the order is framed, amount to a direction to the Court below to clothe that declaration in the proper form of a mandatory order, and to give effect to the mandatory order so expressed. If any difficulty should arise in that form, or be sought to be produced from having recourse to that non-existent ground of objection, the Privy Council will not fail to recommend Her Majesty to deal with such obstructiveness in the most serious and strongest manner. *IN RE BARLOW v. ORDE*

[18 W. R., 175]

34. ———— Decree affirmed by Privy Council.—Decrees affirmed by an order of the Privy Council must be executed with the execution of that order and not as separate decrees. *LETHEBRIDGE v. PROHLAD SEN*

19 W. R., 301

35. ———— Order of Privy Council.—Civil Procedure Code, Act X of 1877, s. 610.—Procedure.—Before a decree-holder in the District Court can obtain execution of a decree which has been affirmed by the Privy Council, he must produce, on the application for execution, a certified copy of the order passed by Her Majesty in Council. *Joy Narain Gires v. Goluck Chunder Myles*, 20 W. R., 444, followed. *JUGGERNATH SAHOO v. JUDOO ROY SINGH*

[I. L. R., 5 Cal., 329: 4 C. L. R., 367]

36. ———— Application for execution of decree of Privy Council.—Civil Procedure Code, Act X of 1877, s. 610.—Transmission for execution of order of Her Majesty in Council.—Evidence of such order.—The provisions of Act X of 1877, section 610, are not to be construed as restricting the only admissible evidence of an order of Her Majesty in Council to a certified copy, on an application for execution made under that section. They must be read as directory, having the object that proper information regarding the order shall be supplied to the

EXECUTION OF DECREE—continued.**3. ORDERS AND DECREES OF PRIVY COUNCIL—continued.****Application for execution of decree of Privy Council—continued.**

Courts in India. Where the original order (given, according to the practice in England, to the successful party, or to one of such parties) had not been filed in the High Court, so as to enable the proper officer to supply a certified copy.—*Held* that a copy, though not certified by him, might accompany a petition for execution under section 610. **HURBISH CHUNDER CHOWDHRY v. KALISUNDERI DEBI**

[I. L. R., 9 Cal., 493: 12 C. L. R., 511]

37. ——— Application to Zillah Courts.—Zillah Courts ought to refer to the High Court parties applying for execution of decrees which have been appealed to England. **HUBERBOOLAH KHAN v. GOWHER ALY KHAN**. 7 W. R., 225

38. ——— Act VI of 1874, s. 19.—Where application for execution of an order of Her Majesty in Council has been made elsewhere than in the High Court, the proceedings are invalid. **JOY NARAIN GIREH v. GOLUX CHUNDER MYTEE**

[22 W. R., 102]

39. ——— Order of Privy Council disturbing possession.—*Decree of High Court.*—*Final decree, Possession under.*—On appeal by *U.* the High Court set aside a decree which the sons of *K.* had obtained in the Court of first instance against *U.* and certain other persons, in a suit brought by them for possession of one third of certain real property. At the same time, on appeal by two of the other persons aforesaid, it affirmed a decree which *U.* had obtained against these persons and the sons of *K.* for possession of two thirds of the same property, in a suit in which he had claimed possession of the whole. It subsequently, on appeal by *U.* against that portion of the decree made in the suit brought by him which dismissed his claim in respect to one third of the property, reversed that portion and gave him a decree for the whole. The sons of *K.* appealed to Her Majesty in Council only from the decree of the High Court setting aside the decree obtained by them in the Court of first instance for one third of the property. Her Majesty in Council set aside this decree of the High Court and restored the decree of the Court of first instance. In the meantime *U.* was put into possession of the whole property in execution of the decree of the High Court which he had obtained in the suit brought by him. When the sons of *K.*, in execution of the decree of Her Majesty in Council, applied for possession of one third of the property, *U.* opposed the application on the ground that he was in possession under a decree of the High Court which had become final. *Held*, by a full Bench of the High Court, that the decree of Her Majesty in Council must be executed, notwithstanding that its execution involved the disturbance of the possession obtained by *U.* under the decree of the High Court which had become final. **UDAI SINGH v. BHARAT SINGH**. I. L. R., 1 All., 458

EXECUTION OF DECREE—continued.**3. ORDERS AND DECREES OF PRIVY COUNCIL—continued.**

40. ——— Privy Council decree reversing decrees of Courts below where property has been made over.—*Restitution.*—*Mesne profits.*—*Interest.*—A plaintiff having sued for possession and obtained a decree which was affirmed in appeal, entered into possession. The mesne profits due as damages from the defendant on account of wrongful dispossession were also calculated and paid into Court. The defendant then appealed to the Privy Council, which reversed the decrees of the lower Courts, and directed the High Court to give effect to its order and declaration in the case. No orders were made by the High Court to this end, and it became the duty of the lower Courts to frame the final decree. The judge made an order for the restitution of the property; but not an order for repayment of the rents and profits derived therefrom by the plaintiff during his possession. *Held* that the Judge should have made this order also, and that interest should be paid on the mesne profits according to the rule that parties should be restored, as far as possible, to the same position as they were in when the Court by its erroneous action displaced them from it. **HAMIDA alias KAJOO v. BHUDHAN. 20 W. R., 238**

41. ——— Decree of Privy Council for costs.—*Civil Procedure Code, s. 610.*—*Execution for costs.*—*Rate of exchange.*—*Meaning of "for the time being."*—Under the last paragraph of section 610 of the Civil Procedure Code, the amount payable must be estimated at the rate of exchange "for the time being fixed by the Secretary of State for India in Council," and the words "for the time being" mean the year in which the amount is realised or paid or execution taken out, and not the year in which the decree was passed. The decree-holders under a decree passed by Her Majesty in Council having taken out execution for a sum of £119-11, under section 610 of the Civil Procedure Code,—*Held* that the rate of exchange being fixed yearly by the Secretary of State for India in Council, the rate of exchange on the date of the application for execution was the proper rate of exchange the decree-holders were entitled to. **PARAM SUKH v. RAM DAYAL**

[I. L. R., 8 All., 650]

42. ——— Reversal of decree by High Court and confirmation of original decree by Privy Council.—*Appeal by some only of defendants.*—On the 27th July 1864, a District Court gave the plaintiff a decree in a suit against all the defendants. All the defendants except one, *B.*, appealed to the Sudder Court from that decree, and on the 6th March 1865, the Sudder Court set aside the decree and dismissed the suit: the plaintiff appealed to Her Majesty in Council, all the defendants except *B.* being respondents. On the 17th March 1869, Her Majesty in Council reversed the Sudder Court's decree and restored that of the District Court. *Held* that, notwithstanding *B.* was not a party to the appeals to the Sudder Court and to Her Majesty in Council, the decree was a valid decree and could be executed against *B.* **KISHEN SAHAI v. COLLECTOR OF ALLAHABAD**

[I. L. R., 4 All., 137]

EXECUTION OF DECREE—continued.**4. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.**

43. — Decree on appeal or review confirming former decree.—Where in a review or appeal proceeding a decree is passed in affirmance of the decree appealed against, the decree of the appellate or reviewing Court is the final decree between the parties, and therefore the decree to be executed. *Bipro Doss Gossain v. Chunder Sikur Bhattacharjee, B. L. R., Sup. Vol., 718 : 7 W. R., 531; and Ram Charan Bysak v. Lakhkant Bannik, 7 B. L. R., 704 : 16 W. R., F. B., 1, explained. BISTOO PERSHAD CHUCKERBUTTY v. ISHAN CHUNDER ROY*

[23 W. R., 57]

44. — Decree appealed from affirmed without mentioning costs.—*Error in decree of lower Court as to amount of costs.*—Held that the decree of the Court of last instance is the only decree susceptible of execution, and the specifications of the decrees of the lower Court or Courts as such may not be referred to and applied by the Court executing such decree. *SHOHRAT SINGH v. BRIDGMAN* . . . I. L. R., 4 All., 376

45. — Decree appealed from affirmed without stating amount of costs.—*Appeal only as to costs.*—The defendant in a suit appealed from so much of the decree of the Court of first instance as related to the amount of costs payable by him to the plaintiff. The decree of the appellate Court directed "that the order of the lower Court be upheld, and the appeal be dismissed: the appellant to pay the costs." Held that the amount of costs awarded by the Court of first instance, although they were not specified in the appellate Court's decree, were recoverable in execution of that decree, inasmuch as those costs were the subject-matter of the appeal, and the appellate Court, in affirming the decision of the first Court on that point, made them the substantive portion of its decree. *Shohrat Singh v. Bridgman, I. L. R., 4 All., 376, distinguished. HIMAYAT HUSAIN v. JAI DEVI* . . . I. L. R., 5 All., 589

46. — Decree appealed from affirmed without stating amount of costs of lower Court.—The original decree in a suit dismissed the suit with costs which were specified. On appeal the Appellate Court directed that the original decree should be affirmed and the appeal dismissed, and that the appellant should pay the respondent's costs in the Appellate Court, which were specified. The decree of the Appellate Court did not contain any specification of the costs of the original Court. Held that the Court executing the appellate decree might execute it for the costs of the original Court looking to the decree of that Court to ascertain the amount thereof. *Shohrat Singh v. Bridgman, I. L. R., 4 All., 376, referred to. BEHARI LAL v. KHUB CHAND* . . . I. L. R., 6 All., 48

47. — Decree affirming and adopting decree of lower Court.—*The decree to be executed where there has been an appeal.*—The effect of the decision of the Full Bench in *Shohrat Singh v. Bridgman, I. L. R., 4 All., 376*, is nothing more than

EXECUTION OF DECREE—continued.**4. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—continued.**

Decree affirming and adopting decree of lower Court—*continued.*

that the last decree is to be regarded as the decree to be executed, whether it reverses, modifies, or confirms; but when it affirms and adopts the mandatory part of the first Court's decree, that decree may be and should be referred to, and the mandatory part of it so affirmed should be executed as though it were the decree of the Appellate Court. *Kristo Kintur Roy v. Burrodacant Roy, 14 Moore's I. A., 465, referred to.* Where the first Court of appeal affirmed the decree of the Court of first instance, and the High Court affirmed the decree of the lower Appellate Court and dismissed the appeal, and the decree-holder made an application of which the object clearly was to have execution taken under the decree of the Appellate Court, by carrying out the mandatory part of the decree of the Court of first instance.—Held that the objection that the decree-holder did not in his application expressly ask the Court to execute the decree of last instance was under the circumstances a mere technical objection, and there was no reason why the execution asked for should not be allowed. *GOBARDHAN DAS v. GOPAL RAM* . I. L. R., 7 All., 368

48. — Execution where appeal is brought.—*Copy of decree.*—The application to execute the decree of an Appellate Court should be made to the Court which passed the first decree, upon or after the receipt by that Court of the copy of the decree certified by the Appellate Court; but *quære*, whether execution should be allowed to issue upon a certified copy procured by the parties and presented to the Judge by petition. Where the decree to be executed is that of the Zillah Court, and that decree has been affirmed in appeal by the High Court, the party applying for execution should state whether or no a further appeal to the Privy Council has been preferred. *TOONDUN SINGH v. POKH NARAIN SINGH* . . . 14 W. R., 205

49. — Agreement that evidence taken in one of analogous cases should be evidence in all.—*Appeal.—Effect of reversal on those cases which were unappealable.*—When the first of twelve suits against the same defendants was filed in the Recorder's Court at Rangoon, it was agreed between the parties, by their advocates in open Court, that all legal evidence to be taken in the first suit should be evidence in the rest. When the case came on for hearing, the advocate for the plaintiffs consented that the other cases should follow the finding of the Court in the first case, but the advocate for the defendant refused assent. Judgment was given in favour of the plaintiffs, and was also entered up in all the remaining cases. Defendant appealed from these decisions to the High Court, which reversed the Recorder's decision in the first case, and subsequently, without hearing argument, reversed the decisions in such (seven) of the eleven as were appealable. Held that the decrees passed by the Recorder's Court in the four unappealed suits were good decrees, on which execution could be issued in the usual form,

EXECUTION OF DECREE—continued.**4. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—continued.**

Agreement that evidence taken in one of analogous cases should be evidence in all—*continued.*

provided they were not altered on review. *NGA BIKE v. SNADDEN* 9 W. R., 276

5. DECREES UNDER RENT LAW.

50. — Mode of execution.—Sale of property other than that on which arrears are due.—A Collector was held to have acted without jurisdiction in ordering the sale of an estate in execution of a decree before proceeding against the tenure upon which the arrears accrued. *JOKEE LALL v. NURSING NARAIN SINGH* 4 W. R., Act X, 5

51. — Decrees under Act X of 1859.—Powers of Collector.—A Collector had power, under Act X of 1859, to sell, in execution of a decree for the payment of money under the Act, not being money due as arrears of rent of a saleable under-tenure, only such moveable property as was capable of being manually seized, and he could issue process against immovable property only when recourse could not be had to the person or to the moveable property capable of being manually seized. *CHANDRA KANT BHATTACHARJEE v. JADUPATI CHATTERJEE* . . . 1 B. L. R., A. C., 177; 10 W. R., 224

52. — Power of Collector.—A. obtained a decree against B. for arrears of rent in respect of a saleable tenure. In execution of the decree, the Deputy Collector of Basseerhant requested the Collector of the 24-Pergunnahs to attach and sell any moveable property belonging to B. He accordingly caused "certain houses and buildings and some moveable properties" belonging to B. to be attached. On an application by B. to the High Court to set aside the attachment,—*Held* that the Collector had no jurisdiction to attach the property. The decree could not be executed by the attachment of any immovable property, except the tenure, before it was shown that satisfaction of the decree could not be obtained by execution against the person or moveable property of the debtor. *DESARATULLA v. NAZIR ALI KHAN* 1 B. L. R., A. C., 216

DEANUTOOLLAH v. SIDDIK NAZIR ALI KHAN
[10 W. R., 341]

53. — Collector, Power of.—Act X of 1859.—A. obtained a decree against B. for arrears of rent. C. was an under-tenant of B. under an *ijara* lease. In executing A.'s decree against B., the Collector sold the "rights and profits of the debts due for rent" from C. to B., for the years 1273-4-5. A. became the purchaser in a suit brought by D., as assignee of A., of rents alleged to be due for the years 1273-4-5. *Held* that, for the purposes of Act X of 1859, rent is moveable property; and that the Collector, therefore, was competent to sell it in execution of the decree, and to effect the sale to A. *MAHES CHANDRA CHATTAPADHYA v. GURUPRASAD ROY* 5 B. L. R., 115; 13 W. R., 401

EXECUTION OF DECREE—continued.**5. DECREES UNDER RENT LAW—continued.****Mode of execution—continued.**

54. — Sale of under-tenure.—Sale of other immovable property of judgment-debtor.—*Beng. Act VIII of 1859, s. 84, and ss. 59-61.*—A judgment-creditor, who has obtained a decree for arrears of rent due in respect of an under-tenure transferable by its own title-deeds or by the custom of the country, is not bound to bring that under-tenure to sale in execution before he can proceed against other immovable property belonging to his judgment-debtor. The case of *Desaratulla v. Nazir Ali Khan*, 1 B. L. R., A. C., 216, which was decided upon section 105 of Act X of 1859, is not applicable to sections 59-61 of Bengal Act VIII of 1859. *Doolar Chand Sahoo v. Lall Chahal Chand*, 1 C. L. R., 564, followed. *KRISTO RAM ROY v. JANAKEN NATH ROY*
[1 L. R., 7 Calc., 749; 9 C. L. R., 324]

55. — Beng. Rent Act, 1869, s. 59.—Landlord and tenant.—Suit for arrears of rent.—Ejectment.—The term "under-tenure," as used in section 59 of Bengal Act VIII of 1869, is not confined to a tenure intermediate between the zemindar and the ryot, but includes any tenure which "by title-deeds, or by the custom of the country, is transferable by sale;" and therefore a zemindar, who has obtained a decree for arrears of rent against a ryot who has a transferable jote, is not entitled to eject the ryot, but his only remedy is to sell the holding under section 59 of the Act. *Nand Lal Ghose v. Seedee Nazir Ally Khan*, S. D. A., 1860, 382, followed. *KRISHNENDRA ROY v. AENA BEWA* . . . 1 L. R., 8 Calc., 675; 10 C. L. R., 309

56. — Suit for arrears of rent.—Ejectment.—Transferable tenure.—Beng. Act VIII of 1869, ss. 22, 59.—In a suit for arrears of rent and for ejectment by a landlord against a tenant who had a right of occupancy in the holding transferable by sale,—*Held* (MITTER, J., doubting) that the tenant was not liable to ejectment, and that the landlord's only remedy was to sell the holding under the provisions of section 59, Act VIII (B.C.) of 1869. *Krishnendra Roy v. Aena Bewa*, 1 L. R., 8 Calc., 675; 10 C. L. R., 399, followed. *Per MITTER, J.*—*Quare*, whether, having regard to the provisions of section 22, Act VIII of 1869, which is not controlled or modified by any subsequent section of the Act, all ryots, whether they have a right of occupancy or not, and whether such right of occupancy be saleable by the custom of the country or not, are not liable to ejectment if an arrear of rent remains due at the end of the year. *FAKIR CHAND v. FOZDAR MISSEER* 1 L. R., 10 Calc., 547

57. — Effect of partial execution.—Where a decree under sections 22 and 78, Act X of 1859, for the ejectment of a ryot from three plots of land was executed against two of the plots,—*Held* that the pottah was not in force as regards the third plot also. *KALEE CHURN BANERJEE v. MAHOMED HASHEM* 7 W. R., 8

EXECUTION OF DECREE—continued.**5. DECREES UNDER RENT LAW—continued.**

58. ——— Subsequent execution against same property in hands of purchaser.—*Beng. Act VIII of 1869, s. 61.*—*A.*, a judgment-creditor, having obtained two decrees, one for money, the other for the rent of certain tenures, sold his debtor's right and interest in the tenures in execution of his money-decree, and afterwards in execution of his decree for rent again put up for sale the same tenures. At the second sale, *B.* became the purchaser of whatever could pass under such sale. *A.* subsequently sued and obtained a decree against *B.* for arrears of rent that had become due in respect of the said tenure since the last supposed sale to him, and in execution of such last-mentioned decree again attached the tenures. On the intervention of third parties, the tenures were released from attachment. *A.* having applied to levy execution on other immoveable properties of *B.* Held that the tenures having been released from attachment, *A.* was not entitled, under section 61 of Bengal Act VIII of 1869, to proceed against the other immoveable property of *B.*, it being open to him to show by a regular suit that the tenures were liable to be sold in execution of his decree; and further, that upon the facts of the case he had disentitled himself to any equitable relief. **HURRIH CHUNDER ROY v. THE COLLECTOR OF JESSORE** . . . **I. L. R., 3 Cal., 712**

59. ——— Decree for measurement of land.—*Beng. Act VIII of 1869, s. 37.*—A decree under section 37 of Beng. Act VIII of 1869, declaring the plaintiff's right to measure the lands of his tenants, is not capable of execution by a Civil Court, but entitles the plaintiff himself to proceed with the measurement; and in the event of his being opposed by the tenants, to invoke the aid of the authorities to assist him. **HAZARI KHAN v. RAMDHONE CHAKI** [**7 C. L. R., 345**]

60. ——— Charge created by payment of arrears of revenue.—*Personal charge.*—*Government revenue.*—*Payment by lambardar of revenue due by co-sharer.*—*N. W. P. Rent Act XII of 1881, s. 95 (g).*—In execution of a decree obtained by a lambardar under section 93 (g) of the North-Western Provinces Rent Act, the decree-holder caused to be attached a certain share upon which the arrears of Government revenue which he had satisfied had accrued. In defence to a suit brought by certain purchasers of the same property from the judgment-debtors to have it declared that the property was not liable to sale under the decree, and to remove the attachment, the decree-holder pleaded that, by the fact of paying the arrears of revenue due on the estate of the plaintiffs' vendors, he had obtained a charge on it, and could bring it to sale to satisfy the decree.—Held that a charge of this nature could not be enforced in execution of a decree, which was merely a personal one, for arrears of Government revenue against persons against whom it was passed by a Revenue Court not competent to establish or enforce a charge on property, or to do more than pass a personal decree, and whose powers in execution were confined to realization from personal and immoveable property of the judgment-debtors. **Nugender Chunder Ghose**

EXECUTION OF DECREE—continued.**5. DECREES UNDER RENT LAW—continued.**

Charge created by payment of arrears of revenue—continued.

v. Kaminee Dosses, 11 Moore's I. A., 258, referred to. **LACHMAN SINGH v. SALIG RAM**
[**I. L. R., 8 All, 384**]

6. NOTICE OF EXECUTION.

61. ——— Decree more than a year old.—*Civil Procedure Code, 1859, s. 216.*—A Court is not competent to execute a decree more than a year old without satisfying itself that a notice has been duly served on the parties against whom execution is applied for. **RAJ BULLUB SHAHA v. GOSSAIN DASS SHAHA** . . . **13 W. R., 400**

62. ——— Omission to give notice of execution.—*Civil Procedure Code, 1877, s. 248.*—*Death of judgment-debtor after decree.*—*Execution against legal representative.*—When a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings. A judgment having been obtained by *A.* against *B.*, and *B.* having died before application was made for execution, *A.* applied for execution of his decree upon a tabular statement in which the judgment-debtor was stated to be *C.*, widow of *B.*, and *C.* was also described as the person against whom execution was sought. Upon this application the property mentioned in the tabular statement was directed to be attached and sold, and it was accordingly sold in execution, and purchased by *A.* No notice under section 248 of the Civil Procedure Code had been served upon *C.* before issue of execution. Held that the application was improper; that the order for attachment and sale should not have been made; and that the Court which made it should have set the execution aside as soon as it became aware that no notice had issued previous to its issue. The fact of there being in the Code of Civil Procedure no section expressly authorising a Court to set aside its proceedings is immaterial, as every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceedings as a matter of course, provided that the interests of third parties are not affected. *Sem-ble.*—Under section 248 the fact that application to execute the decree had been made in the lifetime of *B.* would make no difference, unless an order had been made and the property actually attached under it: as whenever an application is made for execution against a legal representative of the judgment-debtor, the notice required by the section must be issued to him, unless the Court has already ordered execution to issue against him on a previous application. **IN THE MATTER OF THE PETITION OF RAMESURE DASSEE. RAMESURE DASSEE v. DOORGADASS CHATTERJI**
[**I. L. R., 6 Cal., 108; 7 C. L. R., 85**]

EXECUTION OF DECREE—continued.**6. NOTICE OF EXECUTION—continued.**

Omission to give notice of execution—*continued.*

IMMAMUNNISSA BIBI v. LIAKAT HUSAIN
[I. L. R., 3 All., 424]

63. ——— Application for notice of execution.—*Power to proceed in execution on application for notice.*—*Civil Procedure Code, 1859, s. 212.*—Although a Judge should, when necessary, direct notices to be served on judgment-debtors, he cannot proceed in execution on a mere application to issue such notices over the parties who are bound to apply under section 212 of Act VIII of 1859. **PURNA CHUNDRA MOOKERJEE v. SARADA CHURN ROY**
[3 B. L. R., Ap., 21: 11 W. R., 241]

64. ——— Presumption of service of notice of execution.—*Civil Procedure Code, 1859, s. 216.*—*Omnia præsumuntur rite esse acta.*—A notice under section 216 stands upon a different footing from a summons or other notice which a party is bound to serve, and it must be presumed that a Court, until the contrary is proved, has duly issued such notice where required by law to do so. **BIMOLA SOONDURIE DASSEN v. KALSH KISHEN MOJOOMDAR**
[22 W. R., 5]

65. ——— Objection to sufficiency of notice of execution.—*Time for taking objection.*—An objection to the sufficiency of the notice of execution should be taken at the earliest opportunity. **REHWUT KONWUE v. OMRAO BAHADOOR SINGH**
[21 W. R., 148]

66. ——— "Order passed on previous application for execution."—*Civil Procedure Code, 1859, s. 216.*—*Previous proceedings for execution.*—*Interlocutory suit.*—A suit brought by a judgment-creditor against his judgment-debtors and a third party, may be of such a nature as to count as previous proceedings in execution for the purpose of saving time in regard to the operation of the statute of limitation; but it cannot in any sense be considered as an "order passed on a previous application for execution" within the meaning of Act VIII of 1859, section 216. **PEARNE SOONDURI DEBIA v. BHUBO SOONDURIE DEBIA**
[23 W. R., 32]

67. ——— Service of notice of execution.—*Civil Procedure Code, 1859, s. 216.*—*Limitation.*—*Act XIV of 1859, s. 20.*—*Proceeding to enforce decree.*—The service of a notice under section 216 of Act VIII of 1859, if made *bond fide* with a view to take further proceedings, is sufficient to keep a decree alive. **DEIRAJ MANTAB CHAND BAHADOOR v. LAKHI BIBI**
[6 B. L. R., Ap., 148]

Also under the Limitation Act, 1871. See **KOONJ BEHAREE LAL v. GIRDHARI LAL**. 22 W. R., 484

68. ——— Service of notice of application for execution.—Service of notice of application for execution of decree by affixing a copy of it on the wall of the house where defendant was residing is sufficient. **CHILICANY BHASKARAYENIN GARU v. PILBARY SETTY RAGAVALLU NAIDU**. 5 Mad., 100

EXECUTION OF DECREE—continued.**6. NOTICE OF EXECUTION—continued.**

Service of notice of application for execution—*continued.*

See **MAKOONDONATH BHADOORY v. SHIB CHUNDER BHADOORY**. . . . 19 W. R., 102

7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

69. ——— Transfer of decree for execution.—*Effect of transfer on decrees.*—A decree transmitted to a Court for execution is to be regarded as a decree of that Court for purposes of execution. **MOBARUCK ALI v. SOOMNEE KUNJA CHAREE**
[3 N. W., 168]

70. ——— Separate application to execute same decree.—Separate applications to execute the same decree do not constitute separate causes or suits. Thus, when a Judge, *ex necessitate rei*, executes a decree of a Principal Sudder Ameen, he is at liberty to carry out that execution to whatever extent may be necessary. **SHARODA MOYEE BURMONNEE v. WOOMA MOYEE BURMONNEE**. 8 W. R., 9

71. ——— Power of Court to which decree is transferred.—*Notice under s. 216, Civil Procedure Code.*—The Court, to which a decree is sent for execution by another Court, has the power to take the same steps, including the issue of a notice under section 216 of the Code of Civil Procedure, which it could take in execution of its own decree. **CHHAGAN LALL NARBHERAM v. JAMNADAS MANOHARAM**. . . . 11 Bom., 19

72. ——— Transmission of record.—Where a Subordinate Judge's Court in one district executes the decree of a Subordinate Judge's Court of another district, it is bound by section 292, Act VIII of 1859, to comply with a requisition from the latter Court to transmit to it the record of the case. **INDUE CHUNDER DOOGAR v. GOPAL CHAND SATIA**. . . . 11 W. R., 280

73. ——— Striking off case for default.—*Procedure.*—When a case is transferred by the Court which passed the original decree to another Court in order that the decree may be executed, and the proceedings on the application for execution have been struck off the file for default, the proper Court to apply to for a fresh issue of execution is the Court which passed the original decree, and not the Court to which the case was transferred to be executed. **BHOOP SINGH v. SUNKER DUTT JHA**
[6 W. R., Mss., 47]

74. ——— Power of the Court in executing transmitted decrees.—Where a decree was sent to a Court for execution, and was subsequently transferred by assignment, and the transferee applied for the execution of the decree to the Court to which the decree was sent for execution,—*Held* that such application should be made, not to such Court, but to the Court which passed the decree. **KADIE BUKSH v. ILAHI BUKSH**

[I. L. R., 2 All., 283]

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.**

Transfer of decree for execution—continued.

75. ——— Powers of Assistant Judge where case is sent to District Judge.—When an Assistant Judge is invested with all the powers of a District Judge within any part of the district of such Judge, the Court of the Assistant Judge must be considered, equally with the Court of the District Judge, the principal Civil Court of original jurisdiction, and a decree sent for execution in such part of the district is properly executed by or under the directions of such Assistant Judge. **GOBIND HARI WALEKAR v. SHIDRAM BIN SHIDMURTI** [7 Bom., A. C., 37]

76. ——— Power of Court as to striking off case.—*Act VIII of 1859, s. 284.*—Where a decree of one Court has been transmitted to another for execution under section 284 of Act VIII of 1859, the latter Court has jurisdiction to entertain an application to cancel its own order for striking off the case, whatever "striking off" amounts to. **BAGRAM v. WISE** [1 B. L. R., F. B., 91: 10 W. R., F. B., 46]

77. ——— Power of Court to alter decrees.—Where a decree is transmitted by one Court to another for the purpose of execution, the latter Court has no jurisdiction to alter the decree, or the amount mentioned in the order for execution. **ALLY HOSSEIN v. JOOGULKISHORE** [Marsh., 244: 2 Hay, 113]

NUFFER CHUNDER PAUL v. NADOORONISSA BEEBEE 9 W. R., 387

TEJA SINGH v. POKHAN SINGH . 10 W. R., 95
[1 B. L. R., A. C., 62]

78. ——— Notices of execution.—*Civil Procedure Code, 1859, s. 285.*—Where a decree had been obtained in a Zillah Court, and sent to Calcutta for execution, the Court made an order directing a notice to issue, calling on the defendant to show cause why the decree should not be executed by the High Court. On appeal the order was upheld. **RAMDOSS v. LALLAH NUNDOCOOMAR** [1 Ind. Jur., N. S., 169]

KHODA BUKSH v. HUREEN RAM . 2 N. W., 399

79. ——— Civil Procedure Code, 1859, s. 287.—When a copy of a decree or order for execution is transmitted by the Judge of one district A. to the Judge of another B. for the purpose specified in Act VIII of 1859, section 287, the Judge of B. has no authority to transfer it to a third district. If complete execution cannot be had in district B., it is the business of the decree-holder to have his decree re-transmitted to the Court whose duty it is to execute it, and there to obtain a fresh certificate for transmission to any other district where execution may be practicable. **DEHUPUT SINGH v. WOOMA SUNKURN GOPTA** . 21 W. R., 337

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.**

Transfer of decree for execution—continued.

80. ——— Power of Court to which decree has been transferred.—*Civil Procedure Code, 1859, ss. 285, 286, Certificate under.*—The jurisdiction of a Court to which a decree has been transferred for execution is strictly limited to carrying out such execution. Such Court has no power to issue a certificate under sections 285, 286 of Act VIII of 1859, transferring the decree already transferred to it to another Court for execution. The Court to which a decree has been properly transferred for execution having struck the case off the file, a subsequent application for a further transfer of the case to another Court for execution should be made to the Court which originally passed the decree sought to be executed. **SHIB NARAIN SHAHA v. BIPIN BEHARY BISWAS** . I. L. R., 3 Calo., 512
[1 C. L. R., 539]

81. ——— Order passed in Court to which proceedings are transferred.—*Civil Procedure Code, 1877, s. 239.*—Under section 239 of Act X of 1877, a Court to which a decree has been transferred may refer the objector to the Court which passed the decree. **JASSODA KOER v. LAND MORTGAGE BANK OF INDIA** [I. L. R., 8 Calo., 916: 11 C. L. R., 348]

82. ——— Jurisdiction of Court executing such decrees.—*Code of Civil Procedure (Act X of 1877), s. 239.*—Where a Court in one district transfers a decree for execution to a Court situate in another district, it is beyond the jurisdiction of the Court executing the decree to question the correctness or propriety of the order under which the decree was sent to such Court for execution. **BEERCHUNDER MANIKYA v. MAYMANA BIBEE** [I. L. R., 5 Calo., 736]

RAM CHUNDER v. MOHENDRO NATH BOSE [21 W. R., 141]

DHUNESH KOER v. OOLFUT HOSSEIN [21 W. R., 219]

83. ——— Civil Procedure Code, 1877, s. 239.—*Procedure.*—Where, in the opinion of the Court, sufficient cause has been shown against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by section 239 of the Code of Civil Procedure. **BEERCHUNDER MANIKYA v. MAYMANA BIBEE** . I. L. R., 5 Calo., 736

84. ——— Jurisdiction of Court transferring decrees.—*Question of jurisdiction.*—Where a decree passed by a Court governed by the Code of Civil Procedure is sent for execution to another Court in British territory likewise governed by the Code, it is not open to the latter to refuse to execute it on the ground that the former had no jurisdiction. In case of doubt, the Court where execution is sought may adjourn the execution proceed-

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

ings in order to enable the party interested to make an application to the Court passing the decree, and thence, if necessary, to the higher Courts of the same province in their turn. *CHOGALAL v. TRUMAN*

[*I. L. R.*, 7 Bom., 481

85. ————— *Procedure in execution of decree of High Court on appeal from mofussil.*—Where the High Court passes a decree on appeal from a Mofussil Court, the Court which has to execute the decree of the High Court is governed by the rules which govern the execution of its own decrees. *KISTO KINKUR GHOSH ROY v. BURUDAKANT SINGH ROY* 10 B. L. R., 101

[17 W. R., 292; 14 Moore's L. A., 465

S. C. in High Court. *KISHEN KINKUR GHOSH v. BURUDAKANT ROY* 8 W. R., 470

86. ————— *Law governing transferred case.—Limitation.*—Execution is a proceeding to enforce a decree of a Court, and comes under the head of purely adjective law. Such being the case, the law of limitation prevailing at the time of the application must govern it. *PASUPATI LATCHMIA v. PASUPATI MUTHAMBHATLU*

[*I. L. R.*, 1 Mad., 52

87. ————— *Act VIII of 1859, s. 284.—Question of limitation.*—When a decree has been transmitted by the Court which passed it to another Court for execution, the latter Court has jurisdiction to try whether or not execution of the decree is barred by the law of limitation. *PER PRACOCK, C. J.*—When there are different laws of limitation in force in the two Courts, the law applicable to the proceedings in execution of the decree should be the law of the Court to which the decree is transmitted for execution. *LEAKE v. DANIEL*

[*B. L. R.*, Sup. Vol., 970: 10 W. R., F. B., 10

BUZUR BIBBE v. JACKSON 5 W. R., Mls., 14

CHOTI LAL v. MANICK CHAND 7 N. W., 115

BYKUNTANATH MULLICK v. JOYGOPAL CHATTERJEE [7 W. R., 19

88. ————— *Power of Court.—Question of limitation.*—The Court to which a decree has been transferred can take cognisance of a question of limitation, but the question must be one arising from facts which are legitimately before the Court in the course of execution, and not a matter of limitation arising antecedent to transfer. *IN THE MATTER OF THE PETITION OF SUMAT DAS*

[13 B. L. R., Ap., 27

S. C. *SOOMUT DAS v. BHOONUN LALL*

[31 W. R., 292

89. ————— *Power of Court.—Question of limitation.—Civil Procedure Code, 1859, s. 284.*—The transfer of a decree from one Court to another under section 284 and the fol-

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

lowing sections of the Civil Procedure Code, does not give the latter Court a jurisdiction to entertain and determine any question with regard to limitation or otherwise which arose between the parties antecedent to the date of transfer. *LUTFULLAH v. KIRAT CHAND* 13 B. L. R., Ap., 80

[S. C. 21 W. R., 380

90. ————— *Power of Court which passed decree.—Release of judgment-debtor.*—A Judge has no jurisdiction to entertain a petition from, and order the release of, a judgment-debtor imprisoned in execution of a decree, while the execution proceedings are before the Subordinate Judge. *MODHOOSUDUN GHOSH v. ROMANATH GHOSH*

[12 W. R., 65

91. ————— *Reasons for transfer.*—Every Court is bound to execute its own decree, if it can, by process (when necessary) issued against the property or person of the judgment-debtor: it is only when the decree cannot be executed within the jurisdiction of the Court whose decree it is, that it may be sent to another Court for execution. There is no intermediate procedure between these two executions. *MAHARAJAH OF BURDWAN v. SREE NARAIN MITTER* 9 W. R., 348

92. ————— *Civil Procedure Code, 1859, s. 284.—Act VIII of 1859, section 284,* does not restrict the granting of a certificate transferring a decree for execution to another Court to cases where such decree cannot be executed within the jurisdiction of the Court whose duty it is to execute the same. A certificate may be granted upon its appearing to the latter Court that the decree could not have been completely executed by the sale of the property in its own district; but that it could be so executed by the sale of the property in the other district. *KALEE DASS GHOSH v. LALL MOHUN GHOSH* 19 W. R., 307

93. ————— *Transfer of suit from subordinate Courts.—Civil Procedure Code, 1859, s. 6.*—Section 6 of Act VIII of 1859, authorising "a District Court to withdraw any suit instituted in any Court subordinate to such District Court and to try such suit itself, or to refer it for trial," &c., does not justify an order by the District Court for the calling up of execution cases from the files of the subordinate Court, and for the appointment of a manager. *LUCHMEERPUT DOKUR v. JUGUTINDER BUNWARY LALL* Marsh., 195: 1 Hay, 459

94. ————— *Recall of order of transfer.*—Where a Judge had made an *ex parte* order for transfer of a case in execution, it was held he had power to recall it. *SHEO PRASUNNO SING v. BULDHARNE LALL* 13 W. R., 282

95. ————— *Act XVI of 1868, s. 19.—Civil Procedure Code, 1859, s. 562.—Bengal*

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

Civil Courts Act, VI of 1871, ss. 26 & 27.—A District Judge is not competent to transfer a case of execution of a decree which has been passed by his own Court to the file of the Subordinate Judge for disposal. Such a case is not one of the "civil proceedings" referred to in section 19, Act XVI of 1868, read with section 362, Civil Procedure Code, and interpreted by sections 26 and 27, Act VI of 1871. **CHOWDEY HAMEDOOLLAH v. MUTHBOONISSA BIBEE**

[15 W. R., 574]

96. ———— *Act XVI of 1868, s. 19.*—A Zillah Judge has no power to transfer proceedings in execution of a decree to a subordinate Court, unless duly authorised under section 19 of Act XVI of 1868. **MAHOMED KUMBODDEEN v. UROO-BOONISSA** . . . 1 N. W., 113: Ed. 1873, 199

97. ———— *Transfer of case under Act IX of 1861.—Act XVI of 1868, s. 19.*—The Judge had power, under Act XVI of 1868, section 19, to transfer to the Subordinate Judge a case under Act IX of 1861, an application under the latter Act not being a suit. **SONAMONNEE DOSSEH v. JOY DOORGA DOSSEH** . . . 17 W. R., 551

98. ———— *Transfer to Collector.—Power of Collector.—Withdrawal by transferring Court of transferred decree.—Civil Procedure Code, 1877, ss. 320, 321.*—A Collector, to whom a decree for sale of mortgaged property has been transferred for execution under section 320 of the Civil Procedure Code, is limited to one of the three courses specified in section 321, and may not depart from them; much less may he do what the Court itself could not do in such a case—allow payment of the debt to be made by instalments. A Collector, to whom a decree has been so transferred for execution, acts ministerially, and when he delegates his functions to an Assistant or a mamlatdar, incurs a risk of having to answer in damages to the person who is by any error or mistake deprived of the fruits of his judgment; and this risk attaches independently of malice or negligence. The Court that has made a decree or judicial order, which has been transmitted to the Collector for execution, is not deprived of the judicial powers with respect to it which may still at any particular time be competent to such Court, and which it would have had had the order been placed in the hands of its own ordinary officer, the *nasir*. In the exercise of such powers the Court has authority to recall its own record transmitted to the Collector. **MAHADAJI KARANDIKAR v. HARI D. CHIKNE** . . . I. L. R., 7 Bom., 332

99. ———— *Execution of decrees for rent.—Act X of 1859, ss. 23, 77, and 160.—Civil Procedure Code (Act VIII of 1859), ss. 294, 294.—(Act X of 1877), ss. 223, 228.*—Decrees for rent made by the Collector under section 23 of Act X of 1859 can be executed by a Civil Court

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

to which they may be transferred under the sections of the Code of Civil Procedure relating to "the execution of a decree out of the jurisdiction of the Court by which it was passed." **NILMONI SINGH DEO v. TARANATH MUKERJEE**

[I. L. R., 9 Calc., 295: 12 C. L. R., 361
L. R., 9 I. A., 174]

100. ———— *Transfer to Collector.—Irregularities in execution sale.—Power of a Civil Court to interfere.*—When a decree is sent to a Collector for execution, the Civil Court ought not to control his proceedings, unless it is set in motion by one of the parties to the execution proceedings. *Quære*,—Whether a Civil Court can, of its own motion, control the proceedings of the Collector to whom a decree has been sent for execution. **HARGOVAN v. HIRA HARBHAI** . . . I. L. R., 8 Bom., 301

101. ———— *Civil Procedure Code, s. 320.—Transfer to Collector.—Jurisdiction.—Rules made by Local Government.*—A decree passed by a Subordinate Judge upon a bond, in which certain immoveable property was mortgaged, was, in accordance with the rules made by the Local Government under section 320 of the Civil Procedure Code, transferred to the Collector for execution. A sale in execution took place, and the Collector gave the purchaser a certificate of the sale. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so, applied to the Collector to amend the certificate. The amendment having been made as desired, the purchaser again applied to the Subordinate Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the application, holding that only the lesser amount had been sold in execution of the decree. *Held* that, with reference to the second paragraph of Rule 19 of the Rules framed by the Local Government under section 320 of the Civil Procedure Code, regarding the transmission, execution, and retransmission of decrees, and published in the *North-Western Provinces and Oudh Gazette* of the 4th September 1880, the matter of delivery to the purchaser was within the jurisdiction of the Subordinate Judge, notwithstanding the terms of section 320, and notwithstanding the ruling of the Full Bench in *Madho Prasad v. Hansa Kuar*, I. L. R., 5 All., 314. **SUNDAR DAS v. MANSA RAM** [I. L. R., 7 All., 407]

102. ———— *Jurisdiction of Court executing a decree.—Jurisdiction as between District Judge and Subordinate Judge of a Court making a decree to execute it notwithstanding certain special matters.*—The sale of mortgaged property was decreed by a Subordinate Judge. Before the sale another suit, instituted in the same Court for the purpose of having other property substituted

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

in lieu of part of that mortgaged, was transferred to the Court of the District Judge, who decreed, upon consent, that the substituted property should be sold, and that, for the purpose of this sale, this suit should be taken as supplemental to the former one. On the petition of the mortgagee for execution of the decrees, in both suits, in the District Court, it was objected that execution could not proceed therein, on the ground that the decree for sale was that of the Subordinate Court. *Held* that the decree (which affected the whole property mortgaged) was that of the District Court, which accordingly had jurisdiction to execute it. To have enabled the Subordinate Court so to do, an order by the District Court would have been necessary. Matter which had no bearing on the question raised on this appeal having been introduced into the record, it was ordered that all such costs as might have been so occasioned should be disallowed by the Registrar, on the taxation of costs. **BISHENMUN SINGH v. LAND MORTGAGE BANK OF INDIA**

[*I. L. R.*, 11 Cal., 244; *L. R.*, 12 I. A., 7

103. ———— Power of trans-

fer.—*Civil Procedure Code, 1859, s. 362.*—A Zillah Judge must execute his own decrees, and had no power to direct the Principal Sudder Ameen to take up and dispose of an application for execution. **RAJEEB RAM DASS v. MAHOMED HOSSEIN**

[*6 W. R.*, *Mia.*, 51

This ruling refers entirely to execution under Act VIII of 1859, but not to proceedings before that year, when Judges were competent to refer cases of execution to the Principal Sudder Ameen. **NIL KOMUL GHOSH v. NOBIN CHUNDER BOSE**

[*9 W. R.*, 463

104. ———— Civil Procedure

Code, 1859, s. 6.—*Act XXIII of 1861, s. 38.*—A District Court is competent, under section 6 of Act VIII of 1859, and section 38 of Act XXIII of 1861, to transfer to its own file proceedings in execution of decree pending in a Court subordinate to it. **GAYA PARSHAD v. BRUP SINGH** . *I. L. R.*, 1 All, 180

105. ———— Power of the

District Court to withdraw applications for execution.—*Mofussil Courts of Small Causes.*—*Jurisdiction.*—*Civil Procedure Code (Act X of 1877), ss. 25 and 647, sch. II.*—Sections 25 and 647 of the Civil Procedure Code, Act X of 1877, are both applicable to Courts of Small Causes in the Mofussil, and the former section is extended by the latter to execution proceedings in such Courts. Under section 25 of the Civil Procedure Code, Act X of 1877, the District Judge has power to withdraw an application for execution of a decree from a Subordinate Court (such as a Mofussil Court of Small Causes) and to dispose of it himself, or to transfer it to another Subordi-

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

nate Court competent to deal with it. **BALAJI RAN-CHODDAS v. MOHANLAL DALSUKRAM**

[*I. L. R.*, 5 Bom., 630

106. ———— Civil Procedure

Code, 1859, s. 223 (d).—Under section 223 (d) of the Civil Procedure Code in the case of a Subordinate Judge exercising Small Cause Court powers, the Court which has passed a decree in its Small Cause Court jurisdiction may, for any good reason to be recorded in writing, transfer its decree to the other branch of the same Court, as it might to a different Court, for execution, without requiring a certificate under section 20 of Act XI of 1865. For this purpose the two branches or sides of the Subordinate Judge's Court may be regarded as different Courts. **BHAGVAN DAYALJI v. BALU**

[*I. L. R.*, 8 Bom., 230

107. ———— Civil Procedure

Code, 1859, s. 223.—*Madras Civil Courts Act III of 1873.*—*Jurisdiction of Munsif's Court.*—*Execution of decrees of superior Court.*—Although by the Madras Civil Courts Act, 1871, the ordinary jurisdiction of Munsifs is limited in suits and applications of a civil nature to those in which the subject-matter does not exceed in value Rs.2,500, section 223 of the Code of Civil Procedure gives jurisdiction to a Munsif's Court to execute a decree in a suit beyond its jurisdiction which has been transferred to it for execution by a District Court. **NARASAYYA v. VENKATAKRISHNAYYA** . *I. L. R.*, 7 Mad., 397

108. ———— Decree of Small

Cause Court.—*Documents to be transmitted with decrees.*—*Civil Procedure Code, 1859, ss. 286, 287.*—Process of execution against the person or personal property of a judgment-debtor may be issued on the decree of a Court of Small Causes by a Court in another district. Before issuing such process of execution, the Court receiving the decree is bound to see that the provisions in sections 286 and 287 of the Civil Procedure Code have been strictly complied with. The documents required to be transmitted for the purpose of obtaining execution are a copy of the decree and a certificate of any sum remaining due under it, together with a copy of any order for execution that may have been passed. **VENKATA SUBIA v. SIVARAMAPPA** . . . 4 Mad., 331

109. ———— Officer with

jurisdiction both of Munsif and Small Cause Court.—A certificate of non-satisfaction, under Act XI of 1865, section 20, having been obtained from the Court of Small Causes at Arrah, the decree was transferred to the Munsif's Court there, when the judgment-creditor objected that execution was barred by limitation. *Held* that though the Munsif was not competent to adjudicate upon the question of limitation as a Munsif, yet, as a successor in power of the abolished Court of Small Causes at Arrah (whose

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

jurisdiction was transferred to the Munsif's Court), he had jurisdiction to decide the objection. *SOOMUT DOSS v. BHOOBUN LALL* . . . **24 W. R., 151**

110. ———— Decree of Small Cause Court.—*Civil Procedure Code, 1859, s. 257.—Act IX of 1850, s. 78.*—Although the Court of Small Causes at Bombay has power to enforce its decree against moveable property only, yet if that decree be transmitted to a Court to which the Code of Civil Procedure applies, the latter can, under section 287 of that Code, enforce it against immoveable property also. *Quære*,—Whether a Court executing the decree of a Small Cause Court under section 78 of Act IX of 1850 could enforce it against immoveable property. *IN RE JAGJIVAN NANABHAI*

[**I. L. R., 1 Bom., 82**

111. ———— Decree of Small Cause Court.—*Act XI of 1865, s. 20.*—Under section 20 of Act XI of 1865, a Court of Small Causes may transfer a decree for execution to another Court not only when there has been a sale of such moveables of the debtor as the judgment-creditor has been able to discover, and the proceeds of such sale have not been sufficient to satisfy the decree, but also when no sale has taken place at all and the decree remains unsatisfied by reason of there being no moveable property of the judgment-debtor which can be found within the jurisdiction capable of being sold. *IN THE MATTER OF CHANDRA KANTO BISWAS* . . . **3 C. L. R., 558**

112. ———— Jurisdiction of Small Cause Court.—*Act XI of 1865, s. 20.*—Except in the manner allowed by section 20, Act XI of 1865, the Judge of a Small Cause Court could not send a decree of his own Court for execution by another Court, nor could he issue an order under section 268, Act X of 1877, out of his own jurisdiction. *HOSSEIN ALY v. ASHOTOSH GANGOOLY*

[**3 C. L. R., 30**

PARBATI CHARAN v. PANCHANAND

[**I. L. R., 6 All., 243**

113. ———— Change of jurisdiction in districts.—*Held* that after the orders of Government of 1867, dividing the whole of the jurisdiction of the Principal Sudder Ameen of Rajshahye into two portions, the Small Cause Court Judge of Pubna alone had jurisdiction to perform in the district of Pubna the duties which, but for those orders, would have been performed by the Principal Sudder Ameen of Rajshahye. *SHAMASOONDUREE DEBIA v. BINODE LALL PAKRASHEN*

[**14 W. R., 396**

114. ———— Power of Court executing decree.—*Procedure.*—*Decree of Small Cause Court sent for execution to Court of Subordinate Judge.*—*Mafussil Small Cause Court Act, XI of 1865, s. 20, Certificate under.*—*Civil Proce-*

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

decree Code (Act XIV of 1882), s. 239.—*Stay of execution.*—The plaintiff having obtained a decree against the defendant in the Court of Small Causes at Poona, applied, under section 20 of Act XI of 1865, to the Court of the Subordinate Judge at the same place for execution against the immoveable property of the defendant. Notice having been issued to the defendant under section 248 of the Civil Procedure Code (Act XIV of 1882) calling upon him to show cause why execution should not issue against him, he appeared and applied to be allowed to pay the judgment-debt by instalments, alleging that he was an agriculturist, and pleading his inability to pay in a lump sum. The plaintiff denied that the defendant was an agriculturist. The Subordinate Judge raised an issue as to whether the defendant was an agriculturist, and having, after enquiry, found the issue in the affirmative, was of opinion that the decree should be considered a nullity and should not be executed, inasmuch as the defendant being an agriculturist, the Court of Small Causes had no jurisdiction to pass it. On reference to the High Court,—*Held* that the Subordinate Judge was not competent to question the validity of the Small Cause Court decree, his duty being confined to enforcing it, on the "presentation of a copy of it and certificate," as provided by section 20 of Act XI of 1865. Nor could he take any notice of the status of the defendant as an agriculturist. The only course open to the defendant was to apply to the Small Cause Court for a review of its judgment, for which purpose the Subordinate Judge might stay the execution of the decree as provided by section 289 of the Civil Procedure Code (Act XIV of 1882). *KASTURSHET JAYERSHET v. RAMA KANHOJI*

[**I. L. R., 10 Bom., 65**

115. ———— Court abolished after passing decree.—The Court of the Principal Sudder Ameen at K. having been abolished after a decree was passed by it, and the case having been transferred to the Court of the Judge of the Zillah by which execution was regularly issued,—*Held* that the Judge's Court had jurisdiction to entertain a subsequent application for execution though made after the re-establishment of a Principal Sudder Ameen's Court at K. *BIROJA MONEE BARMONEA v. WOOMA MOYEE BARMONEA* . . . **7 W. R., 124**

116. ———— District of North Canara.—*Decree passed by Principal Sudder Ameen.*—A decree passed by a Principal Sudder Ameen of the district of North Canara before that district was transferred to the Bombay Presidency, should be executed by the first class Subordinate Judge who has succeeded to the Court and functions of such Principal Sudder Ameen, and cannot by him be delegated for execution by a second class Subordinate Judge, though the amount of such decree be less than Rs. 5,000. The provision in the Bombay Courts Act (XIV

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

of 1869) that in suits under Rs5,000, the second class Subordinate Judges only shall have jurisdiction, does not affect the execution of decrees passed before that Act came into force. *PIRJADA NASARUDIN v. VENKAT PRABHU*. 9 Bom., 118

117. ——— *Civil Procedure Code, 1859, s. 286.—Certificate of right to execution.*—A certificate under section 286 was given to a decree-holder by a District Court for possession and mesne profits, under which he got possession, after which the case was struck off on account of his delay. He appealed to the Privy Council and was successful, and applied within three years of the Privy Council decree to complete the execution. *Held*, though 11 years had elapsed since the case was struck off, he was entitled to have the mesne profits ascertained without any fresh certificate. *BUBORIA AHUN BASNE KOER v. JOORAJ SINGH*

[23 W. R., 225]

118. ——— *Civil Procedure Code, 1859, s. 284.—Court of Agent for Sirdars.—Decree against Sirdar's son.*—Under the authority of section 284 *et seq.*, the Court of the Agent for Sirdars not having jurisdiction over a Sirdar's son who is not himself a Sirdar, cannot transfer a decree passed against the Sirdar to a Civil Court for execution against the son. To obtain enforcement in such a case against his heir of a decree against the Sirdar, the decree-holder may file a suit in the ordinary Civil Court on his decree. *KHUSALDAS v. SAKHARAM RAMCHANDRA DIKSHIT*. 12 Bom., 212

119. ——— *Assignment of decree after transfer, and irregular payments made under it to purchaser.*—Where a decree-holder, who had obtained a decree in the Civil Court of Loodhiana, which had been transmitted to Saharunpore for execution, assigned his decree before the Saharunpore Court to a third party, without the knowledge or consent of the Loodhiana Court, and moneys were paid to the purchaser by the judgment-debtor on such assignment, and the assignment was subsequently, on objection being taken, sanctioned by the Civil Court of Loodhiana,—*Held*, on a suit for the refund of such moneys, that although they were paid under an irregular sanction of the Saharunpore Court, yet, that as at the time of payment the purchaser was undoubtedly entitled to receive them, and the irregularity of the procedure of the Saharunpore Court had since been cured, and the purchaser was now in a position to execute the decree, that it would be clearly inequitable to order the refund of the money on the score of irregularities. *MOHUN LALL v. BAROO MULL*. 6 N. W., 69

120. ——— *Concurrent orders for execution in different districts.—Power of Court.*—A Court has power to send its decree for concurrent execution into several places, although in

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Transfer of decree for execution—continued.**

its discretion it may refuse to exercise such power. *SARODA PRASAD MULLICK v. LUOHMIPUT SINGH DOOGUR*

[10 B. L. R., 214: 17 W. R., 289: 14 Moore's I. A., 529]

121. ——— *Execution simultaneously in two or more districts.*—A decree may be executed simultaneously in two or more districts. *Saroda Prasad Mullick v. Luohmiput Singh Doogur*, 10 B. L. R., 214, followed. *KRISHO KISHORE DUTT v. ROOPALL DASS*

[I. L. R., 8 Cal., 687: 10 C. L. R., 609]

122. ——— *Simultaneous attachments under same decree.*—Two executions of the same decree, so far as attachment of different properties of the judgment-debtor is concerned, may proceed simultaneously, though ordinarily the sales in execution should not take place simultaneously. *AHMED CHOWDHRY v. KHATOON*. 7 C. L. R., 537

123. ——— *Simultaneous execution of decrees by rival decree-holders.*—The rights of rival decree-holders taking out execution against the same judgment-debtor considered. *LALU MULJI THAKAR v. KASHTRAI*

[I. L. R., 10 Bom., 400]

124. ——— *Power of Court as to execution out of its jurisdiction.—Execution of decrees of Revenue Court by Civil Court.*—Where execution was sought of a decree which was passed in 1860, and which could not be executed by the revenue authorities in consequence of the transfer of its jurisdiction in such matters to the Civil Courts,—*Held* that the Civil Courts had jurisdiction to entertain the application. *LUOHMAN KANT GHOSH v. BAMUN DASS MOOKERJEE*. 17 W. R., 472

125. ——— *Purchase of decrees obtained by judgment-debtor.—Act VIII of 1859, s. 288.*—A. obtained a decree in the Nuddea Court against B., who had obtained a decree against C. in the Beerbhoom Court. The latter was attached by the Nuddea Court, and sold to A. in execution of his decree. A. then petitioned the Beerbhoom Court for execution against C. *Held* that the Nuddea Court had jurisdiction to attach and sell B.'s decree against C., and A. had a right to apply to the Beerbhoom Court for execution thereof. *RAMBAKSH CHETLANGI v. BANWARI GOBIND BAHADUR*

[2 B. L. R., A. C., 65: 10 W. R., 357]

126. ——— *Ground of transfer for execution.*—A decree of the Court of the Subordinate Judge of Moorshedabad was sent to the Court of the Subordinate Judge of Rajshahye for execution, and certain property was attached in that district. A claimant of the attached property then obtained from the former Court an order on the second Court to send the record back again to Moor-

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Power of Court as to execution out of its jurisdiction—continued.**

shedabad, for the purpose of executing the decree there, on the ground that the judgment-debtor had property in that district; and also on the allegation, unsupported by oath, that the property sought to be attached in Rajshahye was his. *Held* that the Subordinate Judge of Moorshedabad had acted without jurisdiction, and the record must be sent back to the Court of the Subordinate Judge of Rajshahye for execution. *Held*, also, that the claimant had no *locus standi* in the Moorshedabad Court to make such application. *INDRA CHAND DUGAR v. GOPAL CHANDRA SHETIA*

[3 B. L. R., A. C., 181: 11 W. R., 557]

127. — *Sale of estate partly within and partly without the jurisdiction.—Civil Procedure Code, ss. 249, 284, 285, and 286.—Certificates of non-execution.*—A money-decree was made by the Judge of the 24-Pergunnahs against a mortgagor who was possessed of property in the 24-Pergunnahs, and also of an estate called Kismut Kosdaha, 18 mauzas of which lay in Zilla 24-Pergunnahs, and 43 mauzas in Zilla Nuddea. The whole estate was entered in the *tawfik* of, and the Government revenue was payable in, the Collectorate of Nuddea. The Judge of the 24-Pergunnahs, without selling the property of the judgment-debtor which was within his jurisdiction, transmitted a certificate under section 285 of the Civil Procedure Code to the Judge of Nuddea, stating that no portion of the amount of the decree had been realised by the Court of the 24-Pergunnahs. Thereupon Kismut Kosdaha was attached and sold by order of the Nuddea Court. In a suit brought against the purchaser for possession of the 18 mauzas lying in the 24-Pergunnahs by a person who claimed to have bought the right, title, and interest of the judgment-debtor in those mauzas, but who, in fact, was not the real purchaser, *Held* that, although the Court of the 24-Pergunnahs strictly ought not to have granted the certificate until the property in the 24-Pergunnahs had been sold, the error in so doing did not make the certificate void, or avoid the proceeding in the Nuddea Court, Kismut Kosdaha being substantially in the Nuddea District. *KALLY PROSONO BOSE v. DINONATH MULLICK*. 11 B. L. R., 56: 19 W. R., 434

128. — *Decree on mortgage.—Sale in execution of decrees.—Property in different districts.—Civil Procedure Code (Act X of 1877), s. 19.*—A suit was instituted on a mortgage of a single revenue-paying estate in the Court of the Subordinate Judge of the district of Backergunge, under the provisions of section 19, Act X of 1877, and a decree was obtained for the sale of the mortgaged property. On an application for execution of the decree to the Court which passed it, *Held* that the Court was competent to order a sale of the whole of the mortgaged property, though only a portion of it was situated in the district of Backergunge. *Kally*

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.****Power of Court as to execution out of its jurisdiction—continued.**

Prosunno Bose v. Dinonath Mullick, 11 B. L. R., 56, followed. *SHUREOOP CHUNDER GOOHO v. AMBER-BUNNISSA KHATOON*. 1 I. L. R., 8 Cal., 703

129. — *Power of Munsif's Court to execute decree against property out of its local jurisdiction.*—In execution of a decree, property situate in three Munsifs—*viz.*, Serajgunge, Pubna, and Nattore, all three being at that time portions of the district and subordinate to the Court of Rajshahye—was attached and sold by order of the Court of the Munsif of Serajgunge. *Held*, by analogy to the principle on which the case of *Kally Prosunno Bose v. Dinonath Mullick*, 11 B. L. R., 56: 19 W. R., 434, was decided, that the sale was not necessarily limited only to the portion of the property situate in the Munsif of Serajgunge, but that that Court might have jurisdiction to make a valid sale of the whole estate, although it might be more convenient in such a case that the sale should be held by a superior Court having jurisdiction over the entire district. *RAM LALL MOITRA v. RAMA SUNDARI DABIA*. 1 I. L. R., 12 Cal., 307

130. — *Power of local Court to sell portion of estate in execution of decrees outside its jurisdiction.*—A Court having local jurisdiction is competent to sell in execution of a decree one or more outlying portions of an estate, even though the greater portion of that estate is not within its jurisdiction. *SHIB NARAIN SINGH v. GOBIND DASS BEUKUT*. 23 W. R., 154

131. — *Civil Procedure Code, 1859, s. 286.—Munsif.—Power of execution of decrees out of local jurisdiction.*—A Munsif is not competent, under Act VIII of 1859, section 286, to bring to sale property lying without his own jurisdiction, without reference to any other Court. *NAWAB ALI v. UZIR MAHOMED*. 23 W. R., 233

132. — *Power of Munsif to attach and sell property, part of which is out of his jurisdiction.*—Where a Munsif orders the attachment and sale of a taluk, part of which lies outside the jurisdiction of his Court, the order is, as regards this latter portion, a nullity, and an attachment and a sale pursuant to the order are void. The order of a Court which is not empowered to make any order at all, does not stand on the same footing as an erroneous order by a Court empowered to deal with the subject-matter of that order. The failure to object to a sale, if the Court had no power at all to hold it, does not make the confirmation thereof conclusive. The limitation of the remedy by separate suit contained in Act VIII of 1859, section 257, applies to cases where a Court acts wrongfully within its jurisdiction, and not to cases where a Court has gone wholly out of its jurisdiction. *Kales Prosonno Bose v. Deno Nath Mullick*, 11 B. L. R., 56: 19 W. R., 434; and *Newab Ali v. Uzir Mahomed*, 23 W. R., 233, consi-

EXECUTION OF DECREE—continued.**7. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—continued.**

Power of Court as to execution out of its jurisdiction—continued.

dered. *UNNOOOL CHUNDER CHOWDHRY v. HURRY NATH KOONDoo* 2 C. L. R., 334

133. ——— *Sale by local Court of property, a portion of which is not within its jurisdiction.*—Where an estate consisting of 18 mauzas, 3 of which were situate in the district of P. and 15 in the district of G., was sold in the Court of the latter district in execution of a decree, it appeared that although no notice had been issued in the district of P., the whole of the land revenue and local rates were paid into the treasury in the district of G. Held that under the circumstances the sale of the estate in the district of G. was not without jurisdiction. See *Unnoool Chunder Chowdhry v. Hurry Nath Koondoo*, 2 C. L. R., 334; and *Kally Prosone Boss v. Denonath Mullick*, 11 B. L. R., 56: 19 W. R., 434. *GUNGA NARAIN GUPTA v. ANNADA MOYEE BURBOOANEE* 12 C. L. R., 404

8. MODE OF EXECUTION.**(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION.**

134. ——— *Division of decree.—Execution in portions.*—A decree cannot be executed, nor can it be seized and sold, in portions. *HARO SANKER SANDYAL v. TARAK CHANDRA BHUTTA-CHARJEE*. 3 B. L. R., A. C., 114: 11 W. R., 488

See *NUND COOMAR FUTTHERDAR v. BUNSO GOPAL SAHOY* 23 W. R., 342

and *GOODUR SAHOY v. DHONNESSUR KORE* [7 C. L. R., 117

135. ——— *Severance of right under decree.*—The right under a decree cannot be severed so that the remedy against the person can remain in or pass to one, and the alternative remedy against the property pass to another. *PADMANABHA v. THANAKOTI* 1 I. L. R., 2 Mad., 119

136. ——— *Decree for land and for certain papers.—Splitting execution.*—Where a judgment-creditor proceeding to execute a decree for land and certain papers, failed to find the papers, and then instituted further proceedings, either to get them, or the money payable in default,—Held that he had adopted the only course open to him, and there was no splitting-up of the decree into different executions. *WOOMA CHURN CHOWDHRY v. KUMOLAY KAMITEN DABEE* 25 W. R., 58

137. ——— *Adaptation of mode of execution to nature of case.—Civil Procedure Code (Act VIII of 1859), s. 212.*—The words "otherwise as the case may be," in section 212, meant that the mode of execution was to be adapted in each case to the nature of the particular relief sought to be en-

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION—continued.**

Adaptation of mode of execution to nature of case—continued.

forced under the decree. *DENONATH RUCKIT v. MUTTY LAL PAUL*

[1 Ind. Jur., O. S., 125: 1 Hyde, 158

138. ——— *Former mode of execution in High Court.—Practice of High Court.—Civil Procedure Code, 1859, s. 250.*—The practice of the High Court under the Civil Procedure Code, on the execution of decrees for money, either against immoveable estate, has been, in the first instance, to issue a writ of attachment, and subsequently, on its return by the Sheriff duly executed, to issue a writ directing a sale. The writ of *fi. fa.* which issued from the Supreme Court was an authority to the Sheriff not only to seize, but also to sell. Section 250 of the Civil Procedure Code applied neither to executions against immoveable property nor to executions against debts due to the defendant; and in order to give to third parties full opportunity of vindicating their right before sale, and also to give the defendant an opportunity of paying, it has not been usual to issue process of attachment and sale simultaneously even against personal property, and it would not seem to be proper to do so, except under special circumstances. *FINANCIAL ASSOCIATION OF INDIA AND CHINA v. PRANJIVANDAS HARBIVANDAS* [3 Bom., O. C., 25

139. ——— *Against what property decree may be executed.—Property hypothecated to debtor.*—Held that a decree-holder is entitled to execute his decree against any property devolving on the judgment-debtor before the decree has been fully executed, and this without reference to whether the property was hypothecated to him; and that the denial of the judgment-debtor that he is interested in the property which it is sought to make subject to execution can have no effect. *BULDEO SINGH v. DWARKA DOSS* 1 Agra, 169

140. ——— *Execution of decree against party holding another decree.—Collector's Court.—Sale of decrees.—Appointment of manager.*—Where a Deputy Collector executes a decree against a party holding another decree from his own Court, he ought, instead of selling that other decree, to appoint a manager under the provisions of Act VIII of 1859 to realise the judgment-debt due thereon. *RAMCHUNDER ROY v. RAM CHURN BUK-SHEE* 9 W. R., 372

141. ——— *Decree declaring lien on property without power to sell.—Civil Procedure Code, 1859, s. 243.*—Where a decree declares a decree-holder's lien on certain property without distinctly declaring his right to sell the same, it may be executed as against that property specially; but the usual course of attachment and sale on one hand, or of attachment and management under section 243, Code of Civil Procedure, on the other hand, must still take place. *NUDDYABASHEE DASS v. REZA CHOWDHRY* 15 W. R., 337

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION—continued.**

142. ———— Decree against railway servant for salary.—*Consent of debtor to particular mode.*—The order of a judgment-debtor, being a railway servant, upon the paymaster to satisfy the decree out of his salary, does not alter the case as regards the mode in which the Court should execute its decree, which should be as directed by law and not according to the consent of the judgment-debtor. *IN RE MACFARLANE* . . . 11 W. R., 39

143. ———— Decree for specific property.—*Order for production of property by defendant after decree.*—There is no provision of the Civil Procedure Code authorising a Court to call upon a defendant to appear in Court and produce property decreed to plaintiff. The decree must be executed in the ordinary course. *BHOZA RUGHUR SINGH v. BHOZA RAJ SINGH* . . . 3 N. W., 319

144. ———— Informality in mode of execution.—*Ground for setting aside execution.*—In execution proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right. *BISSERSUR LALL SARGO v. LUCHMESUR SINGH* [I. R., 6 I. A., 233

145. ———— Warrant of arrest, Power of Sheriff's officer in executing.—*Breaking open door.—Assault and false imprisonment.*—A Sheriff's officer in execution of a bailable writ peaceably obtained entrance by the outer door, but before he could make an actual arrest, was forcibly expelled from the house and the outer door fastened against him. The officer obtained assistance, broke open the outer door, and made the arrest. *Held* that the officer was justified in so doing. *Held* also, that demand of re-entry, under such circumstances, was not requisite to justify his breaking open the outer door. *Quare*,—If indictment for assault and false imprisonment will under such circumstances lie against the Sheriff's officer. *AGA KURBOOLIE MAHOMED v. QUEEN* [3 Moore's I. A., 164

146. ———— Power of officer in executing decree.—*Mamlatdar's Court.—Bombay Act V of 1864.*—A Mamlatdar's Court, authorised under Act V of 1864 (Bombay) to give immediate possession of lands and premises, has the power to direct the breaking open of a door when necessary to give effect to its decree. *BAJI DEV v. SADASHIV BHAI-SHANKAR* . . . 5 Bom., A. C., 158

147. ———— *Breaking open inside door of house.*—A person executing a process directing a general attachment of moveable property, having gained access to a house, has a right to remove the lock from the door of a room in which he has reasonable ground for believing moveable property to be lodged. *KONDASAWMY PILLAY v. KRISTNA SWAMY PILLAY* . . . 5 Mad., 189

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION—continued.**

Power of officer in executing decree—continued.

148. ———— A Civil Court's bailiff, in executing a process against the moveable property of a judgment-debtor, has no authority to use force and break open a door or gate. *ANDERSON v. MCQUEEN* . . . 7 W. R., Cr., 12

149. ———— *Civil Procedure Code, 1859, s. 233.*—*Execution of warrant against moveable property.—Attachment.—Removing locks.*—Under section 233, Act VIII of 1859, a nazir, authorised to execute a warrant by attachment of moveable property, has power to remove locks put by the judgment-debtor on the doors of godowns or other places where his property is stored, and put his own locks thereon for the purpose of attachment and safe custody of the property. *SODAMINI DASI v. JAGHESWAR SUR* [5 B. L. R., Ap., 27: 13 W. R., 339

150. ———— *Bailiff or nazir.—Writ of attachment.*—A bailiff or nazir has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by section 271 of the new Code of Civil Procedure (Act X of 1877). *DANODAR PARSOTAM v. ISHVAR JETHA* [I. L. R., 3 Bom., 89

See SODAMINI DASI v. JAGHESWAR SUR [5 B. L. R., Ap., 27

151. ———— *Process of attachment against person or goods.—Breaking open doors.*—A nazir or sheriff cannot, under a writ of attachment, break open a defendant's dwelling-house to execute civil process against his person or goods if the outer door is closed and locked, even when he finds that the defendant has absconded to evade such execution. The privilege extends to a man's dwelling-house or out-house or any office annexed to the dwelling-house, but not to a building standing at a distance from the dwelling-house and not forming parcel of it. If, however, the outer door of the defendant's dwelling-house be open, and the sheriff or nazir enter, he may afterwards break an inner door to take the goods. *BAI KUVAR v. VENDIDAS GANGARAM* . . . 8 Bom., A. C., 127

152. ———— *Madras Reg. IV of 1816, s. 80.—Personal property only liable to attachment in execution of Village Munsif's decrees.*—Under Regulation IV of 1816 the decrees of Village Munsifs cannot be executed against other than personal property. Such decrees can be executed by a transferee of the decree and against the representative of a deceased judgment-debtor. *KALANDAN v. PAKRICH* . . . I. L. R., 9 Mad., 378

(b) ALTERNATIVE DECREE.

153. ———— Decree for delivery of moveable property.—*Specific alternative amount*

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(b) ALTERNATIVE DECREE—continued.**

Decree for delivery of moveable property—continued.

payable in money.—Where a decree is for the delivery of moveable property and states the amount to be paid as an alternative if delivery cannot be had, the goods must be delivered if capable of delivery, but if not capable of delivery then assessed damages should be paid. **KASHIN NATH KOOKER v. DEBKRISTO RAMANOOJ DOSS** . 16 W. R., 240

(c) ATTACHMENT, REMOVAL OF.

154. ———— Decree declaring attachment should be removed.—A decree declaring that an attachment should be removed cannot be executed for money. **BOYDO NATH SHAW v. SHUMBOO RAMPUTER** . 25 W. R., 59

(d) BOUNDARIES.

155. ———— Declaratory decree as to boundaries.—*Proclamation of decrees.*—The holder of a decree which declares that the boundary line laid down in the survey map as the boundary line of the plaintiff's permanently-settled estate is not the true boundary line, is not entitled either to have the decree proclaimed on the spot or to have the line erased from the survey map. **RAJAKRISHNA SINGH v. COLLECTOR OF MTMENSINGH** . 19 W. R., 232

(e) CANCELMENT OF LEASE.

156. ———— Decree for cancelment of lease.—A decree for cancelment of a lease is virtually one for possession in supersession of that lease, and may be so executed by a Court under Act X of 1859 by which it has been passed. **MAHOMED FAIZ CHOWDREY v. SHIB DOOLAH TEWARR** . 16 W. R., 103

(f) COSTS.

157. ———— Costs against guardian of a minor or manager of lunatic's estate.—The Courts have discretion to allow, if the circumstances of the case require it, execution of a decree for costs to be taken out against a guardian of a minor, or a manager of a lunatic's estate. **OMRAO SINGH v. PREMNARAIN SINGH** . 24 W. R., 264

See, however, **TARA SOONDURK v. RASH MUKJARR** . 12 W. R., 78

BRUJO MOHUN MOJOOMDAR v. RODEO NATH SURMAH MOJOOMDAR . 15 W. R., 192

KOMUL CHUNDER SEN v. SUBBESUR DOSS GOOPTO . 21 W. R., 298

and SHERAFUTOOLAH CHOWDHRY v. ABEDOUNISSA BIKER . 17 W. R., 374

BRJESSURER DOSSER v. KISHORE DOSS [25 W. R., 316]

158. ———— Decree for costs in rent suit.—*Charge on land.*—*Liability for costs of purchaser.*—A decree for costs incurred in a rent suit is no

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(f) COSTS—continued.**

Decree for costs in rent suit—continued.

charge upon a talook in respect of which the suit was instituted and cannot be executed against it. A subsequent purchaser of a share of such talook does not become liable as such for any portion of the costs due under such decree. **ROMA PROSUNNO SINGH v. BOYKANTO NATH GHOSAL** . 3 C. L. R., 504

(g) DAMAGES.

159. ———— Decree for damages.—Procedure laid down for working out an incomplete decree for damages. **MUKERJUN v. MUSEERHUN** [13 W. R., 139]

(h) DECLARATORY DECREE.

160. ———— Declaratory decree.—Execution cannot be obtained on a merely declaratory decree. **MUNIYAN v. PERIYA KULANDAI AMMAL** [1 Mad., 184]

JEORA KHAN SINGH v. THAKOORE SINGH [2 N. W., 303]

161. ———— Decree giving party a right to a recurring payment of uncertain sums.—A decree declaring a party entitled to a constantly recurring right to receive certain payments in kind, valued at a certain annual sum, cannot be executed according to the provisions of the Code of Civil Procedure. **TATA CHARIAH v. SINGARA CHARIAH** . I. L. R., 4 Mad., 219

(i) IMMOVABLE PROPERTY.

162. ———— Decree for sale of immovable property.—*Purchase of property by decree-holder's brother.*—*Execution of decree against judgment-debtor's person.*—*Equity, justice, and good conscience.*—*W.*, the holder of a decree for money, which ordered the sale of certain immovable property in satisfaction of its amount, applied for execution of the decree, praying for the arrest of the judgment-debtor. *W.'s* brother had previously purchased such property at a sale in execution of another decree against the judgment-debtor, paying a small amount for it, in consequence of the existence of his brother's decree. *Held* that, under these circumstances, applying equity, the decree should in the first place be executed against such property, and not against the person of the judgment-debtor. **WALI MUHAMMAD v. TURAB ALI** . I. L. R., 4 All., 497

(j) INSTALLMENTS.

163. ———— Decree payable by instalments.—*Waiver of default in payment.*—*Right to execute for whole decree.*—Where a judgment-debtor, by the terms of a decree, was ordered to pay the amount decreed by instalments, and failed to pay two of such instalments, but subsequently paid them in together with a third,—*Held* that as the decree-holder had taken out the amount paid in, he had lost

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(j) INSTALMENTS—continued.****Decree payable by instalments—continued.**

his right to execute the unpaid balance of the decree till a fresh default had been made. *HUR PERSHAD v. KHOWANEE* 5 N. W., 18

164. ————— *Ground for making default in payment of instalment under decree.—Arrest by another creditor.*—It is not a valid reason for the non-payment of an instalment of a judgment-debt when due, that the judgment-debtor was prevented from paying it by having been arrested by his judgment-creditors for another debt three days before the date on which the instalment was payable. *KALEE CHURN SINGH v. BOODH RAM*

[5 N. W., 77]

(k) JOINT PROPERTY.

165. ————— *Decree in suit for immoveable property sold in execution for debt of one member of joint family.—Declaration of lien in decrees.*—In a suit by certain members of a joint Hindu family to recover from the auction-purchaser certain immoveable property which had been sold in execution of a decree against one member of the family, a decree was obtained for possession subject to a lien in favour of the defendant for the repayment of the debt for which the original decree had been made, with interest at 6 per cent. up to date of realisation. *Held* that the condition in favour of the defendant was not a decree, and could not be treated as such so as to be capable of being put in execution. *RAMANAGRA SINGH v. RAMYAD SINGH* 5 C. L. R., 176

166. ————— *Decree against joint immoveable property.—Sale of undivided share.*—Where an execution-debtor is jointly interested with another person in immoveable property which the execution-creditor seeks to sell in execution of his decree, the ordinary procedure for a Court executing the decree to adopt is to put up for sale the right, title, and interest of the judgment-debtor in his undivided share of the property to be sold. *MATHURADAS GOVARDHANDAS v. FATMAULKA BAGAM* 5 Bom., A. C., 63

167. ————— *Decree naming no specific shares.*—In execution of a decree which merely declared that the right of a judgment-debtor in certain property extended to two thirds of it, the lower Court divided the property before selling the debtor's share. *Held* that as the decree did not specify that any particular portion of the property belonged to the debtor as his share, his right, title, and interest in the property could only be sold, and that the determination of this right must be left for future adjudication between the purchaser and the co-sharer of the debtor, unless an arrangement could be arrived at. *ATMARAM KALIANDAS v. FATMA BAGAM* 5 Bom., A. C., 67

168. ————— *Family dwelling-house.—Joint property.—Act VIII of 1859,*

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(k) JOINT PROPERTY—continued.****Decree against joint immoveable property—continued.**

s. 224.—A decree-holder purchased, in execution of his decree, the right, title, and interest of the judgment-debtor, a member of a joint Hindu family, in the family dwelling-house and land attached. *Held per NORMAN, TREVOR, LOCH, and BAYLEY, JJ.*—That section 224 of Act VIII of 1859 did not apply; that A. was entitled to actual possession of the share of his judgment-debtor in the house as well as in the land, but his share must be marked out so as to cause the least possible inconvenience to the other members of the family. *Per KEMP, J.*—An equivalent in value of the share in the house should be apportioned to him out of the land, which greatly exceeded the dwelling-house in value. *BIJOI KESAL ROY v. SAMASUNDARI*

[B. L. R., Sup. Vol., 172: 2 W. R., Mis., 30]

ESHAN CHUNDER BANERJEE v. NUND COOMAR BANERJEE 8 W. R., 239

See RUGHOONATH PANJAH v. LUCKHUN CHUNDER DULLAL CHOWDREY 18 W. R., 23

169. ————— *Family dwelling-house.*—Suit by purchaser of a decree for the debtor's share in a family dwelling-house, with gardens and tanks. *Held* that, as the suit was for a share of the house and ground, however worthless the land might appear without the residence, or however inconvenient might be the intrusion of a stranger, the plaintiff was entitled to an adjudication of his claim to the land. *BUDDH CHUNDER MADUCK v. CHUNDER COOMAR SHAHA* 5 W. R., 218

170. ————— *Family dwelling-house.*—In a suit for possession by the auction-purchaser of a judgment-debtor's share in a family residence, possession was ordered to be given to him so as not to annoy or insult the inmates of the house; and as the plaintiff could not use the family staircase without exposing the ladies of the family to annoyance, and was obliged to build a separate staircase, he was held entitled to compensation to the value of his share in the family staircase. *OODHOY CHUNDER MULLICK v. PITAMBER PYNNE* 6 W. R., Mis., 75

171. ————— *Family dwelling-house.—Sale in execution of decree.—Share in joint family property.—Service rents.—Right of purchaser.*—Where the interest of one of several joint tenants in a family dwelling-house and in certain lands let out on service tenure is sold in execution, the purchaser is entitled to joint possession of the dwelling-house with the other shareholders, and also to a right to share in the service rents. *Bijsi Kesal Roy v. Samasundari*, B. L. R., Sup. Vol., 172, commented on. *RAJANKANTH BISWAS v. RAM NATH NBOGY* L. L. R., 10 Cal., 244

(l) MAINTENANCE.

172. ————— *Decree for future maintenance.—Arrears of maintenance.—Arrears of main-*

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(1) MAINTENANCE—continued.****Decree for future maintenance—continued.**

tenance can be recovered by process of execution in a suit in which a decree is passed providing for the payment of future maintenance. Where they can be so recovered, they cannot be made the subject of a fresh suit. *SINTHAYEN v. THANAKAPUDAYEN alias PONDILY UDAYAN* **4 Mad., 183**

173. ——— Decree for monthly maintenance.—*Civil Procedure Code, 1859, ss. 201, 212. —Act XXIII of 1861, s. 15.*—A decree for maintenance to be paid at a certain rate per month stands on the same footing as a decree ordering payment by instalments where the decree-holder may apply for execution from time to time as the instalments fall due, and the Court may issue execution under sections 201 and 212 of Act VIII of 1859, and section 15 of Act XXIII of 1861. *PEARSENATH BROHMO v. JUGGES-SURNE alias RAKHALEN DOSSEE* . **15 W. R., 123**

174. ——— Decree declaring right to maintenance, and directing payment of arrears.—*Order for future payments.—Maintenance subsequently falling due, and enforced by fresh suit or by execution of decrees.*—Where the Civil Court, upon the suit of a Hindu widow for maintenance, makes a decree containing an order in express terms to the defendant to pay to the plaintiff the amount claimed by her for maintenance during a past period, but as to the future merely declares her right to receive maintenance at an annual rate from the defendant, the proper way of enforcing the right thus declared is not by executing the decree, but by bringing a fresh suit. Decrees declaring a right to maintenance and directing payment of arrears should contain an order directing payment of future maintenance. *VISHNU SHRAMBOG v. MANJAMMA*

[**I. L. R., 9 Bom., 108**

(m) MORTGAGE.

175. ——— Decree on mortgage.—Collateral security.—Money-decree on bond.—The defendants mortgaged certain property in the mofussil to the plaintiffs in April 1863, and at the same time, as a collateral security to the mortgage, executed a bond in favour of the plaintiffs, and a warrant of attorney to enter up judgment on the bond. Judgment was entered up, and a decree obtained thereon soon after the bond was executed. In accordance with a covenant in the mortgage-deed, the mortgagees entered into possession and receipt of the rents and profits of the estate, which they were authorised to receive for five years from the date of the mortgage. They remained in possession for six years, and then, more than one year having elapsed since any proceedings in execution had been taken, they applied for execution of their decree against the mortgaged property. The property was out of the jurisdiction of the Court. *Held* that, if the application were granted, the execution of the decree must be limited to property other than that which was the subject of the mortgage. There being evidence to show that the parties

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(m) MORTGAGE—continued.****Decree on mortgage—continued.**

had entered into an agreement for a fresh mortgage of the property for twenty-two years, the application for execution was refused. *BRAJANATH KUNDU CHOWDHRY v. GOBINDMANI DAS*

[**4 B. L. R., O. C., 89**

176. ——— Decree establishing a mortgage, and directing sale.—Attachment.—In order to enforce a decree which establishes a mortgage and directs a sale of the mortgaged premises in satisfaction of the mortgage, it is not necessary to issue an attachment. If the decree contains, as it ought to contain, a direction for sale of the mortgaged premises, the proceeding under such a decree by attachment is unnecessary as well as expensive and dilatory. The direction for sale in the decree is in itself sufficient authority for the sale. That direction is founded on the specific lien or charge on the mortgaged premises created by the contract of mortgage, and not on the execution clauses in the Codes of Civil Procedure. *DAYACHAND v. HEMCHAND DEARAMCHAND* . . . **I. L. R., 4 Bom., 515**

177. ——— Decree for enforcement of mortgage.—Execution limited to mortgaged property.—Equity.—*K.* brought to sale in execution of a simple decree for money which he held against *P.* certain property and purchased it himself. The property was subject to a mortgage at the time it was sold. Subsequently a decree was obtained against *P.* enforcing this mortgage, of which *K.* became the holder. *K.* sought to have this decree executed, not against the mortgaged property, but against other property belonging to *P.* *Held* that if *K.* purchased the property knowing that it was mortgaged, or if in consequence of the mortgage he purchased it for a less sum than it would otherwise have fetched, it would be inequitable to allow him to obtain satisfaction of the decree out of the other property of *P.* *GULAB SINGH v. PEMIAN* . **I. L. R., 5 All., 342**

178. ——— Decree for sale of mortgaged property.—Application for execution before time allowed for payment.—Act IV of 1882, ss. 86, 88.—An application for execution of a decree for sale of mortgaged property passed under section 88 of Act IV of 1882 (Transfer of Property Act), and which directed that if the decree were not satisfied within two months the property should be sold, ought not to be allowed before the expiration of the period therein provided. *HAR DAYAL v. CHADAMI LAL*

[**I. L. R., 7 All., 194**

179. ——— Surplus sale-proceeds.—Beng. Act VII of 1868.—Attachment of surplus sale-proceeds.—The purchaser of property, sold subject to the incumbrances thereon, at a sale under Bengal Act VII of 1868, subsequently became the purchaser of a decree passed prior to the sale in a suit upon a mortgage of the property, such decree being declared not only a charge on the mortgaged property, but also personal against the mortgagor. *Held*

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(m) MORTGAGE—continued.****Decree for sale of mortgaged property—continued.**

that the purchaser was not entitled to execute the decree against the surplus sale-proceeds under such sale, although he abandoned his lien on the property. **GOLUK CHUNDER MAHINTA v. SUBBOMANGALA DABI**. I. L. R., 6 Calo., 711: 8 C. L. R., 189

(n) PARTITION.

180. ———— **Decree for partition of property partly ascertained and partly unascertained.—Part execution.**—In the course of a suit for declaration of right to property and for partition, a compromise was entered into by which it was agreed that certain property already ascertained should be divided in certain proportions, and that certain other property not yet ascertained should, on being ascertained, be partitioned on the same basis. The Court merely recorded the compromise, and declared that the decree should be according to terms therein set out. *Held* that this decree could only be executed as to the property which had been ascertained as divisible, and that as to the other property the decree must be taken as declaratory only. **RAM LAPIT RAM v. CHOOARAM, CHOOARAM v. RAM LAPIT RAM** [4 C. L. R., 97

181. ———— **Decree for share of undivided plot of land and removal of trees thereon.—Separation of shares.—Civil Procedure Code, s. 265.—Act XIX of 1873, ss. 107—110.—Partition of mahal.**—*M.* obtained against *R.* a decree for possession of "a one-fourth share of the two fallow lands, Nos. 490 and 541, measuring 7 bighas and 2 bighas 16 biswas respectively, after removal of the trees planted thereon." The Court, in executing the decree, placed the decree-holder in joint possession of the two plots to the extent of the one-fourth share decreed to him, but declined to remove the trees until the said share had been specifically ascertained and partitioned by the Collector in reference to section 265 of the Civil Procedure Code. *Held* that the decree could not be understood to entitle the plaintiff to remove the trees from a larger area than that to which he was entitled under that decree; and that, so long as that area remained joint and unascertained, the plaintiff could not execute the decree in the manner sought. *Held* also, that the decree in the present case could not be called a "decree for the partition or for the separate possession of a share of an undivided estate paying revenue to Government," within the meaning of section 265 of the Civil Procedure Code, so as to require the intervention of the Collector for the purpose of executing the decree; and that the Court of first instance, in order to meet the exigencies of the decree, should have separated the one-fourth to which the plaintiff was declared entitled, and, in executing the decree, should have ordered that the trees standing on the one-fourth area should be uprooted. **RAM DAYAL v. MEGU LALL**. I. L. R., 6 All., 452

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(o) PARTNERS.**

182. ———— **Decree against one of several partners in firm.**—It is an improper way of executing a decree obtained personally against one of the several partners of a firm to seize part of the partnership property, to sell that part, and then distribute the proceeds between the execution-creditor and the other partners of the firm. **KESHAV GOPAL GINDE v. RAYAPA**. 12 Bom., 165

(p) POSSESSION.

183. ———— **Order for delivery of possession.—Civil Procedure Code, 1859, s. 223.—Semble.**—A decree which is not a decree for possession cannot, under section 223, be executed by an order for delivery of possession of property in the possession of a third party who has acquired a title subsequently to the institution of the suit. **AMBER-CONISSA KHATOON v. ABEDONISSA KHATOON** [16 W. R., 307

184. ———— **Decree for possession.—Civil Procedure Code, 1859, s. 223.—Removal of building.—Decree for khas possession.**—If in executing a decree for khas possession it is necessary to remove any of the defendants from the land covered by the decree, the Court, on application, is authorised under Act VIII of 1859, section 223, to remove such person; but if the decree is silent as to a building situated on the land, it is not within the province of the Court which executes, to direct that the building be pulled down. **RADEA GOBIND SHAHA v. BRIJENDRO COOMAR ROY CHOWDERY** [18 W. R., 527

185. ———— **Civil Procedure Code, 1859, s. 223.—Possession of house locked up by judgment-debtor.**—In a case in which the officers of a Munsif's Court were unable to give a decree-holder possession of a house, because the judgment-debtor had bolted and locked the doors, and the Munsif struck the case off the file, the High Court held that the Munsif was bound under the Code of Civil Procedure, section 223, to remove the locks and to place the decree-holder in possession of the house. **GUNESH CHUNDER SHAH v. RAM DHUNESH DOSSEE**. 23 W. R., 283

186. ———— **Civil Procedure Code, 1859, s. 223.—Act VIII of 1859, section 223, refers to decrees generally whenever they may be passed, and provides that being so passed they are to be effectual from the time the suit was instituted, so far as parties claiming under a title made by the judgment-debtor are concerned, even when such title was created before an appeal was filed from the order dismissing the suit, and when no decree existed.** *Per GLOVER, J. (MITTER, J. dissentiente).*—When a Court of competent jurisdiction has pronounced its judgment in a suit, that suit is for the time at an end. Where a suit is dismissed and no petition of appeal is filed, the suit has no legal existence, and there is no suit pending. **CHUNDER COOMAR LAHOOREE v. GOPUR KRISTO GOSWAMEE**. 20 W. R., 204

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(p) POSSESSION—continued.****Decree for possession—continued.**

187. ————— *Decree partly in occupation of defendants' ryots.*—*Civil Procedure Code, 1859, ss. 223, 224.*—Where a decree is partly for a share of land in the occupancy or khas possession of the defendants, and partly for a share of land in the occupancy of ryots, the decree as to the former can only be executed according to section 223, Act VIII of 1859; and as to the latter, according to section 224. *SHAMA SOONDERY DEBBA v. JARDINE, SKINNER & Co.* . . . 7 W. R., 376

Reversing on review, *S. C.* . . . 8 W. R., 144

188. ————— *Decree for ijmal property.*—*Civil Procedure Code, 1859, ss. 223, 224.*—Where in a suit against certain sutputtees and putneedars to recover possession of a share of an ijmal family talook, plaintiff obtained a decree, it was held that the Court executing was bound, under section 223, Act VIII of 1859, to put her in possession of the immoveable property adjudged, and, if necessary, to remove any person who might refuse to vacate; and that her having already been put in possession, under the provisions of section 224, was no bar to her being put into the more direct and actual possession contemplated by section 223. *ADORN-MOREN DASSER v. PERMOHUND MUSSANT* [9 W. R., 454]

189. ————— *Civil Procedure Code, 1859, s. 224.*—*Delivery of shares and interest in property.*—Plaintiff having only partially succeeded in a suit against *R., G.,* and others for possession of certain land with meane profits, appealed to the High Court, who gave him a decree with costs. Upon this, all the defendants except *R. and G.* applied for a review, and obtained a modification of the High Court's judgment, such as left the lower Court's decree standing against *R. and G.* alone. Plaintiff then applied for execution. Held that the only thing that the plaintiff could do in these circumstances was to ask for delivery, in the mode prescribed in section 224, Code of Civil Procedure, of the shares and interest of *R. and G.,* but that the Court in execution was not authorised to make any enquiry into the extent or amount of these shares in relation to the other defendants. *ANNODA PRESHAD MOOKERJEE v. THEOLUCKHNATH PAUL CHOWDEY* . . . 13 W. R., 123

190. ————— *Civil Procedure Code, 1859, s. 224.*—An application for execution of a decree for possession, asking for the eviction of the defendant, is quite different from an application for possession under section 224, Act VIII of 1859. Although the lower Court rightly refused to grant the former application,—Held that there were no grounds for refusing the latter application, except as to that part in which the decree-holder asked for an order to issue to the ryots to pay rent to him, which order would be beyond the purview of that section. *GIBBON v. SHMO PURSHUN MISSEER*

[17 W. R., 236]

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(p) POSSESSION—continued.****Decree for possession—continued.**

181. ————— *Civil Procedure Code, 1859, ss. 223, 224.*—Where a decree-holder who had received possession under section 224, Code of Civil Procedure, and gave the usual acknowledgment, was refused khas possession of part of the land which defendants claimed to hold as ryots, it was held that his proper course was an application under section 223, although the case had been struck off the execution file, and that defendants' allegation of purchase (their sole plea at the trial) having failed, they could not afterwards set up a ryotti title. *BANER MUHTOON v. GOPES BRUGGUT* . . . 12 W. R., 285

192. ————— *Civil Procedure Code, ss. 263, 264.*—Applying the principle laid down in *Adoremonee Dosses v. Prem Chand Mussant*, 9 W. R., 454; and *Baner Muhtoon v. Gopes Bruggut*, 12 W. R., 285, it was held that a Munsif had jurisdiction to issue an order for khas possession under section 263, Act VIII of 1859, although in the first instance he had ordered possession to be given under section 264. *HUB KISHORE AUDHIKARY v. SUDYO CHUNDER NUNDEE* . . . 17 W. R., 80

193. ————— *Reversal of decree giving mortgagors possession.*—*Execution of decree made on reversal.*—Where a decree under which mortgagors obtained possession of mortgaged property is reversed, the mortgagees are entitled to be replaced in possession and to get complete restitution, and to be placed in the same position as they were in before the erroneous decree was made, even if the decree reversing the erroneous decree does not provide that the mortgagees should recover possession. *KOONDUN LALL v. RAM RUCHA SING* [14 W. R., 465]

194. ————— *Decree for possession of lands of which plaintiff is partly in possession.*—In a suit for possession of certain plots of land, where plaintiff appeared to be in exclusive possession of other lands devolving by the same title, the Munsif compelled the plaintiff to alter her claim into one for a third of the whole of the lands of which she was entitled to a share, and gave her a decree accordingly. When she sought to execute the decree, the defendant objected that she ought first to execute it in respect of the lands in her possession which were alleged to exceed the one-third decree. Held that the decree-holder was entitled to execute her decree in respect of the lands in the hands of the defendant. *RADHA KRISTO PANJAH v. BAKASOON-DUREN DOSSEN* . . . 13 W. R., 9

195. ————— *Decree for specified property.*—Where it was ordered in execution that a decree-holder should get possession of a specified plot out of three into which certain property had been divided for purposes of valuation, and if that did not satisfy the decree other property should be added from the other plots,—Held that so long as any portion of the specified plot remained, the decree-

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(p) Possession—continued.****Decree for possession—continued.**

holder could not touch the remaining plots. **JOGEN-
DRO NATH MULLICK v. BHOY KESHUB ROY**

[19 W. R., 161]

(q) PRINCIPAL AND SURETY.

196. — Decree against principal and surety.—*Interest.*—*R. sued M., B., C., and P.* for money due for goods supplied. Separate solehnamas were filed by each of the four defendants, in which they admitted the debt, and each undertook to pay one fourth thereof, with interest, by instalments; and each further agreed that if the other three should make default and the amount due by them should not be realised by the sale of their property, then he should be liable to make good the deficiency. A decree was passed by the Court in accordance with the terms of the solehnamas. *C. and P.* each paid up their fourth shares, but *M. and B.* having failed to pay, *R.* applied for execution against *C. and P.* in respect of the liability of *M. and B.* *Held* that, in the absence of proof that the whole property of *B.* had been exhausted, *R.'s* application could not be allowed. Where a decree for payment of a certain sum with interest was passed against certain defendants as principal debtors, and against other defendants as sureties, and it appeared that the decree-holder had allowed time to the principal debtors for the purpose of increasing the amount of interest,—*Held* that the decree-holder was not entitled to interest after the time when he might and ought to have put up the property of the principal debtors for sale, when possibly it might have realised the whole of the debt then due. **RAMANUND KOONDU v. CHOWDHRY SOONDRE NARAIN SARUNGY**

[I. L. R., 4 Cal., 381]

(r) PRODUCE OF LAND.

197. — Decree for produce of land.—*Execution for future produce.*—*Decree before Civil Procedure Code, 1859.*—In the execution of a decree for land passed prior to the enactment of the Code of Civil Procedure, in which the value of the produce of the land was given to the plaintiff up to the date of the decree, it is not competent to the Court executing the decree to grant further produce up to the date of execution. **CHINNATTA CHETTY v. NARANA-
PAIYA**

6 Mad., 15

(s) REMOVAL OF BUILDINGS.

198. — Decree ordering removal of wall.—*Civil Procedure Code (Act X of 1877), ss. 235 and 260.*—*Special appeal.* *Power of High Court is.*—Upon an application under section 235 of Act X of 1877 (Civil Procedure Code) for the execution of a decree, which directed the judgment-debtor forthwith to pull down and remove such portion of a wall as had been erected by him upon the wall of the decree-holder, the mode in which the assistance of

EXECUTION OF DECREE—continued.**8. MODE OF EXECUTION—continued.****(s) REMOVAL OF BUILDINGS—continued.****Decree ordering removal of wall—continued.**

the Court was required to be given was stated in column (j) of such application to be by giving the decree-holder possession of his wall by pulling down the wall erected thereon. The Court directed an order to issue to the nazir to remove the judgment-debtor's wall from the top of the decree-holder's wall. *Held* that the decree-holder's application could not be granted in that form, and that he should have asked the assistance of the Court to be given in the way provided for by section 260 of Act X of 1877, by the imprisonment of the judgment-debtor, or the attachment of his property, or both. *Held* also, that the Court was wrong in passing the order it had, but that it should have pointed out to the decree-holder the manner in which he should have asked the assistance of the Court to be given and the remedy to which he was entitled; and that, upon such amended application being made, the proper course to pursue was to serve a notice on the judgment-debtor, directing him to comply with the order contained in the decree within a time to be fixed by such notice; and that if he failed to comply with such order within the time so limited, the Court might then, at the instance of the decree-holder, make an order, either for the judgment-debtor's imprisonment, or for the attachment of his property, due regard being had to the provisions of section 260 in the latter case. *Held*, further, that the High Court, in special appeal, should not vary the order for execution which had been passed in such a way as to give the decree-holder that relief for which he did not ask. **PROTAP CHUNDER DASS v. PHARY CHOWDHRAIN**

[I. L. R., 8 Cal., 174; 9 C. L. R., 453]

(t) RIGHT OF WAY.

199. — Decree giving passage through doorway.—*Removal of door.*—Where a decree only declared plaintiff's right of passage through a doorway, and to remove the brick-work with which it was filled,—*Held* that, in executing it, the decree-holder was not authorised to remove a wooden door in existence there. **ROCKNEN KANT CHOWDHRY v. NUND LALL CHOWDHRY**

[25 W. R., 120]

(u) SIRDAR, HEIR OF, DECREE AGAINST.

200. — Decree against heir of Sirdar.—*Suit on decree.*—The mode of enforcing against a Sirdar's heir (who is not a Sirdar) a decree passed by the Agent's Court against that Sirdar, is by a suit founded upon the decree. **GOVIND VAMAN v. SAKHARAM RAMCHANDRA** . I. L. R., 3 Bom., 42

9. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES.

201. — Agreement of parties not embodied in a decree.—Execution cannot be issued upon a razinama, unless the terms of it are

EXECUTION OF DECREE—continued.**9. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—continued.****Agreement of parties not embodied in a decree—continued.**

embodied in a decree of the Court. *DARBBA VENKATTA SASTRI v. VURELLA GANGAIA. Ex parte VURELLA GANGAIA*. **2 Mad., 305**

202. ——— **Compromise of suit.—Decree made on razinamah after lapse of five years.—Execution of decree on razinamah.**—A suit was compromised by a razinamah which required that a decree should be passed in conformity with its terms. The Munsif, instead of passing a regular decree, endorsed an informal order on the razinamah, and five years afterwards, upon an application for execution, the Munsif made a formal decree and ordered its execution. The Civil Judge considered this procedure erroneous, and ordered that the decree should not be acted on. *Held* that it was competent to the Munsif to make a decree in pursuance of the razinamah upon the application of the party interested, even after an interval of five years; and that the decree having been properly made, the Judge had no authority to direct that it should not be acted on. *VENKATARAMANA HODAI v. BAPANNA PAI*. **7 Mad., 103**

203. ——— **Application to execute solenamah made after decree.**—Where parties to a suit which had been decreed entered after remand into a compromise and filed a solenamah in accordance with which the case was decided,—*Held* that an application to execute the solenamah was not a proceeding taken on the basis of the decree, and was illegal. *PRESO MADHUS SIRCAR v. BISSUMBHUR SIRCAR*. **15 W. R., 514**

204. ——— **Agreement not to execute decree.—Injunction to restrain execution.**—*Civil Procedure Code, 1859, s. 206.*—Where a decree-holder agrees for a good consideration not to enforce his decree, the Court may legitimately on the suit of the opposite party issue an injunction against the former not to do what he has agreed not to do, section 206 notwithstanding. *NUSO KISHEN MOOKERJEE v. DEBNATH ROY CHOWDEY*. **22 W. R., 194**

205. ——— **Agreement not to execute unless on a contingency.—Agreement to give good title.**—Certain property was handed over by a judgment-debtor to the decree-holder for the purpose of satisfying the decree, and an arrangement was made between them under which it was stipulated that if, within a given interval, there should hereafter be found to be a defect in the title of the judgment-debtor, and the decree-holder should be dispossessed, then whatever the unrealised portion of the amount of the decree, the decree-holder should be at liberty to realise it by execution of the decree. *Held* that the reasonable construction to be put upon this agreement was that if there appeared to be a defect of title to any portion of the property handed over, and the decree-holder should be dispossessed of it by reason of such defect, then the transaction was to be put an end to, and he was to revert to his original right. As a part of the agreement, the judgment-debtor was held to have

EXECUTION OF DECREE—continued.**9. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—continued.****Agreement not to execute unless on a contingency—continued.**

waived the benefit of the law of limitation if the event should happen upon which the decree-holder was entitled to fall back upon and execute his decree. *ROY LUCHMESPUR SINGH v. JOWAHUR ALI*. **[13 W. R., 497]**

206. ——— **Agreement for execution in a particular manner.—Agreement made before decree.**—An agreement entered into before decree, between a person who subsequently became the decree-holder and the defendant, his debtor, stipulating that the decree should be enforced in a particular manner, is no bar to the execution of that decree according to its terms. *SAKHARAM RAMCHANDRA DIKSHIT v. GOVIND VAMAN DIKSHIT*. **[10 Bom., 361]**

207. ——— **Second execution after debt has been realised under the first and misapplied.—Agent not authorised to receive amount of decree.**—Execution was issued upon a decree, and the proceeds of the execution paid over by the officer of the Court to the muktear of the execution-creditor, and misapplied by him. A second execution was afterwards issued under the same decree in ignorance of the first. *Held* that, although the muktear may not have had authority to receive the proceeds of the first execution, the receipt of such proceeds by the Court officer absolved the execution-debtor from all further liability; and that the second execution was illegal, and the execution-creditor was responsible in respect of it. *PURTAB CHUNDER BOROOAH v. BHUGGOBUTTY DABBA*. **[Marsh., 59:1 Hay, 131]**

208. ——— **Judgment-debtor acquiring interest in property after sale in execution.—Right to second execution for balance of decree.**—If a judgment-debtor, whose property has been once sold in execution of decree, again acquires an interest in the same property, there is no law which prohibits the decree-holder from applying for a second sale of the property to satisfy a balance due on his decree. *GANESH PRASHAD v. SHRO CHURUP LALL*. **6 N. W., 197**

209. ——— **Execution after satisfaction.—Decree for possession.**—A decree for possession once satisfied by the plaintiff's being put in actual possession, cannot afterwards be revived or re-executed on the plaintiff being dispossessed. *KHATOOR BIRSE v. FURUKH ALI*. **6 W. R., Mis., 106**

210. ——— **Mistake, Agreement under.—Agreeing to interest at certain rate unpaid.—Subsequent execution.**—Where a decree-holder, under a misconception of the law, asked to receive interest, calculating that he was not entitled to more on account of interest than the principal sum decreed, and the judgment-debtor did not pay in the money,—*Held* that the decree-holder was entitled to

EXECUTION OF DECREE—continued.**9. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—continued.****Execution after satisfaction—continued.**

fall back upon the original decree, and execute it according to its terms. **ABED HOSSAIN v. ASSUD ALY**
[11 W. R., 29]

211. — Execution after adjustment out of Court.—Certificates of part satisfaction.—Act X of 1877, s. 258.—Where a judgment-debtor has out of Court partly satisfied his decree-holder subsequent to the transmission of the decree for execution to another Court, but before actual execution has been applied for, he is entitled, on execution in full being demanded, to an order from the Court to which the decree is transferred for execution, calling upon the decree-holder to certify the fact of such part payment. **RAJENDRONATH ROY BAHADOOR v. CHUNNOOMUL** . . . I. L. R., 5 Cal., 448

212. — Civil Procedure Code, 1877, s. 255.—Section 255 of the Civil Procedure Code puts on the party applying for execution the obligation of stating any adjustment between the parties after decree; that is, any matter not done through the Court as well as any agreement through the Court. **PAUPATYA v. NARASANNAN**
[I. L. R., 2 Mad., 216]

213. — Civil Procedure Code, 1877, s. 258.—An adjustment of a decree not certified to the Court by either party within the time limited by law, cannot be recognised as a bar to execution. **CHEDUMBARA PILLAI v. RATNA AMMAL**
[I. L. R., 3 Mad., 113]

214. — Satisfaction of decree.—Subsequent application for execution.—After a decree had been satisfied and the case struck out at the request of the decree-holder, he discovered that, by resorting to a different mode of calculation, he might have recovered more under the decree. The Court refused to reopen the matter, or to allow execution for the difference. **COLONAS v. BULAJAN**
[Marsh., 211: 1 Hay, 587]

215. — Satisfaction of decrees by agreement.—One decree afterwards set aside.—By mutual agreement two decree-holders entered up satisfaction in respect of their cross-decrees. Nevertheless, one of them appealed from the decree passed against him and obtained its reversal. He then applied to issue execution on his cross-decree. *Held* that the application could not be entertained as satisfaction had been entered. The grounds upon which the application could have been entertained discussed. **GUPINATH ROY v. DINABANDHU NANDI**
[3 B. L. R., Ap., 62]

216. — Settlement of case.—Subsequent application for execution.—A suit having been decreed, defendants appealed, but on both parties petitioning to the Court to the effect that they had come to a settlement of their differences, the appeal was struck off the file. The plaintiffs then applied to execute the original decree. *Held*

EXECUTION OF DECREE—continued.**9. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—continued.****Satisfaction of decree—continued.**

that as the Appellate Court did not reverse the decision of the first Court, the decree stood good, except so far as the plaintiffs, judgment-creditors, were debarred from executing it by their own agreement. **MEWA SING v. AZEERZODDEEN KHAN**
[13 W. R., 311]

217. — Intended satisfaction.—Striking off execution.—Failure to complete satisfaction.—An intimation to the Court of a contemplated satisfaction of the decree by arbitration, on which intimation the execution case was removed from the file, would not preclude the decree-holder from suing out execution again, unless it be proved on enquiry that the result of the private arbitration was a satisfaction of the decree in the mode contemplated by the parties. **CHOONNEE LALL v. DOORGA PERSHAD** . . . 3 Agra, 252

218. — Application by assignee of decree-holder after satisfaction entered.—A share of a decree was mortgaged by the decree-holder's vendor, who sold his rights and interests to petitioner, who then sought to execute the decree as against the judgment-debtor with reference to that share. The judgment-debtor having paid in the money by order of the Court, and the mortgagee having entered up satisfaction of this decree against the judgment-debtor, *Held* that there was an end to that decree as against any person liable under it for the mortgagee's share. **KRISTO DOSS KOONDOR v. WILKINSON** . . . 17 W. R., 159

219. — Deed of compromise.—Service of idol.—Two brothers executed and filed a deed of compromise, dividing between them the family property, and a decree was passed in terms thereof. Under this decree the elder was to hold possession of certain lands, the rents of which were to go to perform the worship of the family idol. The younger, however, kept the elder out of possession of the lands, who therefore performed the worship at his own charges, and then took out execution for possession and mesne profits, in order to recoup his own expenditure on the family idols. The elder brother having died without executing his decree, his widow applied to execute it for the amount of the mesne profits due under it. *Held*, that the widow was entitled to execute the decree for mesne profits of the idol lands, without showing that the ceremonies had been performed by her husband out of his own private funds. **RAJRAJIBUN MUSTAFI v. TARAMONNE DOSSEN**

[2 B. L. R., P. C., 79: 11 W. R., P. C., 31
12 Moore's I. A., 380]

220. — Refund decreed.—Application for further execution.—A decree-holder attached certain money deposited to the credit of a suit in another Court to which suit the judgment-debtor was a party, in the belief that the said money belonged to the judgment-debtor. The money having been remitted from the Court in which it was

EXECUTION OF DECREE—continued.**9. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—continued.****Satisfaction of decree—continued.**

deposited to the Court executing the decree, a claim was made in that Court by the party entitled to the money. The claim was rejected and the money was paid out to the decree-holder, and satisfaction of the decree was entered in the register. A suit was then brought against the decree-holder, and it was decreed that he should refund the sum obtained by him on the ground that it did not belong to his judgment-debtor. Having refunded the money the decree-holder applied for execution of his decree. *Held* that the fact of satisfaction being entered in the register was no bar to the application being granted. **LAKSHMANA CHETTI v. NARASIMHASAMI**. I. L. R., 7 Mad., 167

221. ——— *Partial satisfaction under arrangements made by Court.—Limitation.—Subsequent application for execution.*—In execution of a decree, an order was made by the Court, directing the payment of the rents of certain property, which had been attached as they became due from the mukuridar to the judgment-debtors, to be made to the decree-holder to satisfy his decree; and afterwards the execution-case was struck off the file. Subsequently, default having been made by the mukuridar in the payment of the rents of certain years, and the decree not having been fully satisfied, the decree-holder applied for an order directing the payment of the rents which were in arrear to be made by the mukuridar in accordance with the previous order. Notice having been directed to be served on the judgment-debtors, they came in and pleaded limitation. *Held* that as the application was not strictly one for fresh execution, limitation could not apply; and that, as the effect of the order in the execution-proceedings was virtually to appoint the decree-holder receiver under the provisions of section 243 of Act VIII of 1859, and as the attachment was still in force, his proper course was to file a regular suit *qua* receiver against the mukuridar. **RADHA KISSORE BOSE v. AFTAB CHUNDR MAHATAB** [I. L. R., 7 Cal., 61]

222. ——— *Partial satisfaction.—Compromise.—Further application for execution.—Surety.*—A. having obtained a decree against B. and C. (the former being made primarily liable), took out execution, and on obtaining partial payment of the amount due to him by the sale of certain property belonging to B., entered up satisfaction as to that amount. Subsequently, D., another judgment-creditor of B.'s (who had a lien on the properties sold in execution of A.'s decree) brought a suit against B. and A., seeking for a refund of the moneys received by the latter; this suit (to which C. was not made a party) was compromised by A., who agreed to make a partial refund. *Held*, on A.'s applying for execution a second time against the representatives of C., that the partial satisfaction of the decree entered up was binding upon A. so as to prevent a second application for execution for the same amount being made; and that even were it not so, the refund made on a private understanding between them by A. to D.

EXECUTION OF DECREE—continued.**9. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—continued.****Satisfaction of decree—continued.**

in the suit brought by D. against B. and A., could not be binding upon B., unless he were a party to the compromise, and much less would it be so as against the representatives of C., who was not a party to that suit, and therefore the application could not be entertained. **WAHIDDOONISSA v. ROY MOHAMMED PERSHAD SAHOO**. I. L. R., 5 Cal., 128

223. ——— *Acquiescence.*—Certain property was attached in execution of a decree against the judgment-debtor in the year 1847. This attachment was set aside on the application of persons claiming the property as their own. These persons were sued with the judgment-debtor by the judgment-creditor, and another decree was passed in 1855, declaring the said property liable to sale in execution of the decree of 1847. The decree of 1847 had been satisfied in part in execution proceedings taken under the decree of 1855 against the heirs of the judgment-debtor. *Held* that the balance of the decree of 1847 could not be recovered in execution under the decree of 1855 against the heirs of the judgment-debtor, and that no acquiescence in the part on the part of the judgment-debtor under the decree of 1847 could render such execution valid. **BINDA PRASAD v. AHMAD ALI**. I. L. R., 1 All., 368

224. ——— *Claims to attached property.*—A. obtained a money-decree against B. declaring certain properties belonging to B. liable to be sold in satisfaction of it. Other decrees were subsequently obtained against B., in execution of one of which certain of these properties were sold (subject to the lien), and purchased by A. himself; and in execution of another, certain others were sold also (subject to the lien), and purchased by C. On A. proceeding to execute his own decree against B., C. sought to have it declared that satisfaction should be entered upon it to the extent of the value of the property purchased by A. *Held* that C. was not entitled to appear in the execution-proceeding following upon a case to which he was no party. **GREENJA BROODH MITTER v. KISHEN KISHORE GHOSH** [7 W. R., 221]

10. EXECUTION BY AND AGAINST REPRESENTATIVES.

225. ——— *Right of execution.—Illegitimacy of decree-holder declared after decree.*—Where a decree was made in favour of persons on the presumption that they were legitimate, and by a subsequent High Court decision they were found to be illegitimate, *Held* that they were not precluded from executing the decree. **HIMMUT BAHADUR v. SOLANO**. 17 W. R., 428

226. ——— *Execution by representative.—Illegitimacy, Question of.—Civil Procedure Code, 1859, ss. 102, 103, and 208.—Act XXIII of 1861, s. 11.*—The questions which, under section 11, Act XXIII of 1861, may be determined by a Court

EXECUTION OF DECREE—continued.**10. EXECUTION BY AND AGAINST REPRESENTATIVES—continued.****Execution by representative—continued.**

executing a decree, must be between parties to the suit in which the decree was passed, and must relate to the execution of the decree. A person who was not on the record when the decree was made, does not constitute himself a party to the suit by applying for execution, and a question as to his legitimacy is consequently not one which the Court executing the decree is competent to entertain. Sections 102 and 103 of Act VIII of 1859 relate only to proceedings prior to decree, and not to proceedings in execution. Section 208 of the same Act does not apply where the person seeking to execute is not a transferee from the original decree-holder, either by assignment or operation of law. The section does not apply to cases where the right to an equitable interest in a decree is seriously contested; and was not intended to enable a Court to try, on an application for execution, such an important question as the legitimacy of an heir. Since proceedings under section 208, Act VIII of 1859, were, by section 364 of the Act, not liable to appeal, a suit would, probably, lie to reverse an order passed therein. *ABIDUNNISSA KHATOON v. AMTRUNNISSA KHATOON* . . . **L. L. R., 2 Cal., 327**
[**L. R., 4 I. A., 66**

Affirming the decision of the High Court in
[**S. C. 20 W. R., 305**

227. ——— **Purchaser from decree-holder.—Act XXIII of 1861, s. 11.—Civil Procedure Code, 1859, s. 208.—Right of appeal.**—Where a decree had been purchased benami, and the party alleging herself to be the real purchaser had not been put upon the record as a party, and an application for execution made by her under section 208 of Act VIII of 1859 had been refused, and there was a dispute as to who was the real purchaser of the decree,—*Held* that the applicant was not a party to the suit within the meaning of section 11 of Act XXIII of 1861, and had no right of appeal against the order refusing her application. *Abidunnissa Khatoon v. Amirunnissa Khatoon*, **L. L. R., 2 Cal., 327**, followed. *SOBHA BIBEE v. SAKHAMUT ALI*
[**L. L. R., 3 Cal., 371; 1 C. L. R., 331**

228. ——— **Death of decree-holder.—Injunction to restrain execution.—Revival of proceedings.**—Where a decree-holder, whose right of execution has been, by injunction restraining him pending another suit from executing the decree, temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. *KALYANBHAI DIPCHAND v. GHANOSHAMAL JADUNATHJI*
[**L. L. R., 5 Bom., 29**

229. ——— **Civil Procedure Code, ss. 207-208.—Representative of decree-holder.**—Where application is made for execution of a decree standing in the name of a deceased person, the Judge ought, under section 208 of the Code of Civil Procedure, in exercise of his judicial discretion, to put one of the applicants at

EXECUTION OF DECREE—continued.**10. EXECUTION BY AND AGAINST REPRESENTATIVES—continued.****Death of decree-holder—continued.**

least on the record, and to take such steps as to him may seem right and proper for protecting the interests of other claimants. If the deceased died while the suit was pending in appeal, the first amendment in the record must be to put in place of the deceased the names of those persons who were allowed by the Court to carry on the appeal in his name. *ABDOOL-LAH v. REASUT HOSSAIN* . . . **20 W. R., 51**

230. ——— **Representative of deceased decree-holder.—Civil Procedure Code, 1859, s. 103.**—The claim of a petitioner to represent a deceased person for the purpose of executing a decree made in favour of the deceased ought not to be rejected, but the Judge should, in accordance with the principle of section 103, Act VIII of 1859, call upon the plaintiff to establish his right to represent the deceased. *WOOMA CHURN MOOKERJEE v. LUCKHEE NARAIN ROY CHOWDHRY* . . . **1 W. R., Mis., 10**

231. ——— **Right of representative of decree-holder to execution.—Civil Procedure Code, 1859, s. 210.**—The representative of a deceased person in whose favour a decree has been made, cannot claim execution as a matter of strict right; but must satisfy the Court, under section 210, Civil Procedure Code, that it is proper that he should be allowed satisfaction of the decree; and the Court cannot determine the question without hearing the opposite side. *UMRITH NAUTH CHOWDHRY v. CHUNDEE KISHORE SINGH* . . . **21 W. R., 31**

232. ——— **Death of judgment-debtor.—Civil Procedure Code, 1859, s. 210 and s. 204.—Application to make heir or surety of deceased liable.—Delay.**—An application under section 210, Civil Procedure Code, cannot be allowed to succeed upon the ground which would support an application under section 204, and an application under section 204 must be disposed of on a state of facts which would give the Judge power to issue the order under section 204. Where a judgment-creditor delays long after the death of the judgment-debtor in following such debtor's property into the hands of his heir, it is incumbent on him to explain the reason of the delay. *AMHEN AHMED v. VELANT ALI KHAN*
[**20 W. R., 422**

233. ——— **Civil Procedure Code, 1859, s. 210.—Right to execute decree against representative where certificate of administration has been obtained.**—A decree-holder is at liberty, under section 210, Act VIII of 1859, to follow his deceased judgment-debtor's property in the hands of the parties in possession, notwithstanding a certificate under Act XXVII of 1860 has been obtained by a third party. *DUNPUT SINGH BAHADOOR v. RAJESUREN* . . . **15 W. R., 476**

234. ——— **Right of representative of co-sharer to execute decree.—Personal right.**—The right of one of several co-sharers in an

EXECUTION OF DECREE—continued.**10. EXECUTION BY AND AGAINST REPRESENTATIVES—continued.****Right of representative of co-sharer to execute decree—continued.**

endowment to recover possession of the land from which he has been ousted by the other co-sharers, is a personal one, and does not descend to his heirs. A decree for that purpose obtained by him, if not executed by him in his lifetime, will become infructuous after his death. His widow, however, can recover in a regular suit whatever sums he paid out of his own funds for keeping up the service of the idols. *RADHA JEEBUN MUSTOFER v. TARA MONNE DOSSER* **3 W. R., Mis., 25**

235. ———— **Judgment-debtor purchasing share in decree.**—*A.* mortgaged certain property to *B.*, and afterwards sold a two-annas share thereof to *C.*, and gave him an ijara of a portion. *B.* obtained a decree on his mortgage, which decree was purchased by *C.*, who then applied for execution. The judgment-debtor *A.* objected that *C.* was not competent to take out execution, being a co-sharer and an ijaradar, but this contention was overruled. *KALLY DOSS, BHADURY v. GOLAM ALI CHOWDHRY* **3 C. L. R., 237**

236. ———— **Representative of minor.—Execution by guardian.—Death of minor.**—When a party applies to execute a decree on behalf of a minor, his representative capacity comes to an end by the death of that minor; and further steps in execution, or otherwise, must be taken by the legal representative of the deceased, whoever that may be. *HULODHUR ROY CHOWDREY v. JUDDONATH MOOKERJEE* **14 W. R., 162**

237. ———— **Decree passed against dead man.—Civil Procedure Code, 1859, s. 119.**—Where the sole defendant to a suit dies before decree, a decree passed against him on the supposition of his being still alive is incapable of being executed. Cases falling under Act VIII of 1859, section 119, stated. *ROOFNARAIN SINGH v. RAMAYEN SINGH* [3 C. L. R., 192]

238. ———— **Representative of debtor.—Procedure.**—Exposition of the procedure to be observed for the execution of a decree against the legal representative of a deceased person. *ROODRO NARAIN ROY v. NITYANUND DOSS* **8 W. R., 195**

239. ———— **Execution of decree where judgment-debtor is dead.**—Execution cannot issue against the estate of a deceased person until there is some one on the record as representing the estate. *LEKRAJ ROY v. BECHARAM MISSEER* [7 W. R., 52]

240. ———— **Execution against person as representative.**—If execution has once been duly issued against a person as representative of one who is deceased, this person cannot dispute his representative character on the occasion of any subsequent issue of execution against him as representative. *DHERRAJ MAHATAB CHUND v. PRADEEN DOSSER* **6 W. R., Mis., 61**

EXECUTION OF DECREE—continued.**10. EXECUTION BY AND AGAINST REPRESENTATIVES—continued.**

241. ———— **Execution against person personally after failure to execute against him as representative.**—Where successive applications for execution had been made for years against a party merely as the representative of a deceased defendant, it was held that execution could not be taken out against him personally as one of the original defendants, even if he were liable in both capacities. *PREM LALL GOSSAMER v. HOSSEINMOODEEN* [13 W. R., 36]

242. ———— **Decree against deceased person, Effect on representatives.—Civil Procedure Code, 1859, ss. 104, 203, 210, 249.**—When a decree has been obtained against *A.* in his lifetime, and *A.* dies before execution, *A.*'s estate is properly described in the proceedings in execution as the estate of *A.* (section 210, Code of Civil Procedure); and in the certificate of sale the purchaser is properly declared to have purchased the right, title, and interest of *A.* in the property sold; but this procedure is improper in cases in which the debtor dies before or pending the suit, and the suit is brought or continued against his representative. In such cases the representative, and not the deceased person, is the defendant (sections 104 and 203); and in the notification of sale (section 249) and in the certificate of sale (section 259) it ought to be set forth that what is sold is the right, title, and interest of the representative on the record. *NATHI HARI v. JAMNI* **8 Bom., A. C., 37**

243. ———— **Representative of debtor.—Civil Procedure Code, 1859, s. 203.**—Section 203, Act VIII of 1859, although it primarily refers to a party who has been substituted before decree for the original debtor, is equally applicable to a person who has become representative of the original debtor in execution proceedings, his liability being limited to the extent of the property of the original debtor which may have come into his hands. *JAFUR HOSSEIN v. HINGUN JAN* **8 W. R., 161**

244. ———— **Execution against representative where he has assets but fails to satisfy decree.**—If a decree-holder can show that assets of a deceased judgment-debtor have come into the hands of such debtor's legal representative, and if the representative fails to satisfy the Court that he has duly applied such assets, the latter may be arrested in execution of the decree. *DHERRAJ MAHATAB CHUND BAHADOOR v. MUNMOHINEE DASSEE* [12 W. R., 517]

245. ———— **Civil Procedure Code, 1859, s. 203.**—When a decree-holder wishes to execute his decree against the heirs of his judgment-debtor to the extent of property inherited from the debtor and not duly applied by the heirs, he must, before he can put section 203, Act VIII of 1859, in force, satisfy the Court that no such property of the deceased can be found as he can sell in execution. *INDRO NARAIN MISSEER v. KRISTO CHUNDER MAHTO* [14 W. R., 362]

EXECUTION OF DECREE—continued.**10. EXECUTION BY AND AGAINST REPRESENTATIVES—continued.**

246. ——— Party in possession of property of deceased.—An order was made under section 210 of Act VIII of 1859, making the legal representatives of a deceased judgment-debtor parties to a suit in execution of a decree obtained against the deceased in his lifetime. Subsequently the decree-holder discovered that certain property which he claimed to be the property of the deceased, was in the possession of a third person, *C.*, and he applied to have *C.*'s name put upon the record and to be allowed to execute the decree against him. *Held* that the Court had no power to put *C.*'s name on the record. **NADIR HOSSAIN v. BISSEN CHAND BASSAMAT** **3 C. L. R., 437**

247. ——— Marriage of party pending execution.—“*Judgment.*”—*Civil Procedure Code, 1859, s. 105.*—A party having died while a suit against him was pending, his widow was brought upon the record as defendant, and judgment was given against her, which was subsequently affirmed on appeal. The original decree embraced an award of certain *wasilat* (accruing after the husband's death) for which the widow was personally liable. Between the original and final judgments she married again, and execution of the decree was accordingly sought against her second husband. *Held* that he was not liable to summary proceedings in execution, and that the term “judgment” in section 105, Act VIII of 1859, did not include the judgment in appeal. **BINDABUN CHUNDER SINGAR v. MACKINTOSH** [9 W. R., 442]

248. ——— Decree for an account.—*Personal decrees.*—Where a decree ordered a defendant to give in certain accounts within a specified period, and the defendant survived the period without any proceeding being ever taken against him, it was held that the decree was binding upon him personally, and could not, after his death, be executed against his widow and representative. **BIDDOO MOOKHEE DASSEE v. BIRJOY KESHUB ROY** **12 W. R., 495**

249. ——— Decree for damages.—*Civil Procedure Code, 1859, ss. 102, 103.*—*Liability of purchaser for personal debt.*—A defendant, against whom a Principal Sudder Ameen had decreed damages on account of certain malicious and wrongful conduct towards plaintiff, appealed to the High Court; but before the appeal came on for hearing he died. Upon this a party (*M.*) sought to be substituted for the deceased appellant, not as his legal representative, otherwise than as having purchased a share in his property, and in consequence liable to be injuriously affected if the plaintiff proceeded to execute the decree which he had obtained in the lower Court. *Held* that the *dena-pauna* clause in *M.*'s deed of purchase from deceased did not make *M.* liable to pay so purely personal a debt of deceased as that which the decree created, and consequently *M.*'s only title to be the appellant's legal representative failed. **MACLEOD v. KUNHOJE SAHOO** **9 W. R., 271**

II

EXECUTION OF DECREE—continued.**10. EXECUTION BY AND AGAINST REPRESENTATIVES—continued.**

250. ——— Effect on decree of judgment-debtor becoming by inheritance one of decree-holders.—Where a judgment-debtor becomes by inheritance one of the decree-holders in respect of the same property, or a share in it, the effect of the inheritance, either as to a part or as to the whole of the decree, is to extinguish it *pro tanto*. **POGOSE v. FUKUROODDEEN MAHOMED AHSAN alias ALMOODDEEN CHOWDHRY** **25 W. R., 343**

251. ——— Judgment-debtor acquiring interest in decree as representative.—A plaintiff who had obtained a decree having died, and the defendant in the suit being one of the representatives of the deceased plaintiff, and as such entitled to succeed to a share in his estate,—*Held* that the mere fact of the defendant being one of the representatives of the deceased did not debar the other representatives from executing the decree according to their rights. **WISE v. ABDOL ALI** [7 W. R., 136]

252. ——— Right to raise question as to validity of decree.—*Execution against sons of deceased judgment-debtor.*—Where the sons of a deceased judgment-debtor, whose estate is declared by the decree to be liable to sale, are admitted on the record as his representatives, they are not entitled, in the execution stage, to reopen the whole case, and to ask for a decision as to whether the debt incurred by the father was not for the benefit of the estate, or was in some other way invalid under the Hindu law and not binding on the joint family. **SHRO SAHOY PANDEY v. RAM BHUNJUN SINGH** [23 W. R., 127]

RAMANUGRA SINGH v. KISHEN KISHORE NARAIN SINGH **23 W. R., 265**

BURTOO SINGH v. RAM PURMESSUR SINGH [24 W. R., 364]

253. ——— Impeachment of the decree by a legal representative.—*Power of Court to review its order of sanction for transfer.*—*Mofussil Small Cause Court Act, XI of 1865, s. 21.*—*Civil Procedure Code (Act XIV of 1882), s. 623.*—On 4th June 1879, one *A.* obtained a Small Cause Court decree against *B.*, the widow of the opponent's separated brother, and on the 17th November 1881 assigned it to the applicant. Immediately after the assignment the applicant applied to the Court for execution, which was ordered under section 232 of the Civil Procedure Code (Act XIV of 1882)—neither *A.* nor *B.* having appeared to object to it, though notice of the applicant's application was given to them. The applicant, accordingly, on 6th February 1882, recovered Rs. 10 from *B.* in execution. Shortly afterwards *B.* died, and the applicant applied for further execution of the decree against the opponent as her legal representative. The opponent admitted that he was her heir, but objected to the execution on two grounds, *viz.* : (1), that the decree had already been satisfied, and (2) that the transfer of the decree was fraudulent and collusive. The lower Court rejected

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EXECUTION OF DECREE—continued.**10. EXECUTION BY AND AGAINST REPRESENTATIVES—continued.****Impeachment of the decree by a legal representative—continued.**

the application for execution, holding, as to the alleged satisfaction, that it could not be recognised, as it was made out of Court; but, as to the second objection, that though the sale was duly effected, there was fraud and collusion in the assignment of the decree. The applicant thereupon applied to the High Court. *Held* that the applicant was entitled to execution. As to the first objection, the decision of the lower Court was right. As to the second objection, there was no evidence of fraud or collusion; and the Court having found that the sale was duly effected, the applicant had the same right to execute the decree as the transferor *A.* had. If the judgment-debtor had been alive, she could not have resisted the execution, and, as her legal representative, the opponent did not stand in any better position. The Court was bound to execute its own decree, it being unreversed and in full force. *MULCHAND RANCHOODAS v. CHHAGAN NARAYAN*

[I. L. R., 10 Bom., 74]

11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER.

254. ——— Joint decree.—*Unchanging character of joint decree.*—When once a joint decree has been given, that decree ever after remains a joint decree, any act or conduct of the decree-holder notwithstanding. *JUGGUERNATH SINGH v. AHMEDDOOLAH*

8 W. R., 132

ODDH BEHARI LAL v. BROJO MOHUN LAL

[4 B. L. R., Ap., 41: 13 W. R., 128]

255. ———*Unchanging character of.*—A joint decree remains a joint decree, notwithstanding the acts of the decree-holder in realising his money from one or more of the judgment-debtors separately, for he is entitled to realise his debt from any one of the debtors, and by proceeding against one he does not relieve the other debtors from their joint liability to him. *NUNKOO LALL v. DHUNESH KOORE*

17 W. R., 497

256. ———*Joint and several liability.*—On 29th November 1861, *A.* obtained a decree against *B., C., D.,* and others in the following terms: That "the suit be decreed with mesne profits as far as they can be ascertained to be charged upon all the defendants jointly and severally; the costs of the plaintiff to be paid by the defendants, and each of the defendants to pay his or her own costs." On 6th October 1866, *C.* instituted a suit against *A.* to have the sale of certain mouzahs, which had taken place in execution of *A.*'s decree, set aside. This suit was decided by the High Court in favour of *C.*, and the decision was confirmed by the Privy Council on 14th June 1872. In the meanwhile *A.* proceeded to execute his decree as against *B.* and *D.*; *D.* objected; the lower Court allowed her objections, and the High Court on appeal, on 12th December 1866, affirmed that decision. The lower Court allowed

EXECUTION OF DECREE—continued.**11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER—continued.****Joint decree—continued.**

A. to proceed to execute his decree as against *B.*, and on 2nd June 1866, certain property belonging to *B.* was sold in execution of *A.*'s decree, and purchased by *A.* On 8th August 1866, the Court duly confirmed the sale, and ordered the suit to be struck off the file. On 5th July 1869, *A.*, stating that there was still a sum of money due to him under the decree of 29th November 1861, made an application praying that the suit might be restored to the file, and that the rights of *B.* in certain property might be put up for sale. *Held* that *A.*'s decree being a joint one, he was entitled to execute it against any of the defendants he might select. *WARD ALI v. MULLICK ENAYET HOSSAIN ALI*

[12 B. L. R., 500: 20 W. R., 31]

SEENATH GHOSH v. SAHIB RAM ROY

[12 B. L. R., 504, note: 12 W. R., 304]

KRISHTO KISHORE CHUCKERBUTTY v. RAM LOCHUN BURDHUN

2 W. R., Mis., 49

GOPAL PRESHAD v. RAMANOOGRA SINGH

[8 W. R., 201]

ROGHONATH DOSS v. ALLADEEN PATTUCK

[5 W. R., 9]

257. ———*Joint judgment-debtors, Liability of.*—In executing a joint decree against several debtors, it is not open to a Court to stay the sale of the property of certain of the debtors, upon their offering to pay what they consider their share of the amount due under the decree; nor can a Court, in such a case, upon proper action taken by the judgment-creditor, refuse to attach and sell the property of any one of the judgment-debtors in satisfaction of the entire judgment-debt. The liabilities of joint debtors as amongst themselves, if not settled privately, can be determined only in another suit. *KALLY MOHUN PAL v. DINO NATH CHUCKERBUTTY*

[8 C. L. R., 34]

258. ———*Joint and several decree for mesne profits.*—On an appeal from an order passed in execution of a decree for possession and mesne profits, the High Court laid down the principle that, though the decree was in words a joint and several decree for mesne profits, yet where it could be proved incontestably that out of a number of defendants any one had been in possession only of particular lands or a distinct mouzah or lease, his liability to satisfy the decree would in equity extend no further than to such particular land, mouzah, or lease, and for such land the decree-holder could take out execution as against lessor and lessee; the principle was then applied to the case under appeal. *Held*, in explanation of that opinion, that as the appellant was the lessee of one village, he could be held jointly and severally liable with the proprietors (co-defendants), and the decree-holder could proceed against him either severally or jointly with those defendants, and realise the wasilat due on that village. *GUNESH DUTT v. BULWUNT SINGH*

[14 W. R., 175]

EXECUTION OF DECREE—continued.**11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER—continued.****Joint decree—continued.**

259. ————— *Release of some debtors on payment of part.*—When a decree-holder having a joint decree against several persons deals with some of them as severally liable for certain respective shares, he cannot execute the same decree as a joint one against the remaining judgment-debtors. **BISSONAUTH TAWARRY v. KOYLASHBANY NARAIN SINGH** **2 Hay, 297**

260. ————— *Release of one debtor.*—The fact of a decree-holder giving a release to one or more of the judgment-debtors who were jointly and severally liable, cannot prevent his proceeding against the others for the balance due. **SHEO CHURN LALL v. RAM SURUN SAHOO** . **16 W. R., 49**

261. ————— *Release of one of several joint debtors.*—Having regard to section 44 of the Contract Act, a release of one of two judgment-debtors who are made jointly liable for the amount of the decree does not discharge the other from liability; execution can be taken out against him. **KIAM ALI v. KAYAMADDI** . **6 C. L. R., 212**

262. ————— *Liability of judgment-debtors.*—When the judgment-debtors are jointly and severally liable to pay the decreed amount, the fact that one has paid his quota of an instalment will not modify his joint liability if default be made by the other judgment-debtor, and an order protecting the estate of the former from proceedings to realise the whole sum decreed is improper. **SALIE RAM v. RAM SEWUK** . . . **1 Agra, Mis., 14**

263. ————— *Satisfaction of decrees.*—*Representatives of decree-holder.*—Where two joint decree-holders, each interested in an eight-anna share in a money-decree, issued joint execution, and one of them, after the death of the other, received the whole amount due under the decree,—*Held* that this was only satisfaction as respects half of the decree, and that the representatives of the deceased were entitled to issue execution for the remaining half. **MAHIMA CHUNDEA ROY v. PYARI MOHUN CHOWDHERY** . **2 B. L. R., Ap., 43: 11 W. R., 262**

264. ————— *Joint share-holders, Debt due to, on mortgaged property.*—A mortgaged property, burdened with the payment of an entire debt to two shareholders, is liable to sale at the instance of both creditors separately so long as their claims remain unsatisfied. The act of one of two holders of a bond cannot destroy the lien of the other on property pledged to both as security for a joint debt. **INDURJEET KOONWAR v. BRIJ BILAS LALL** **3 W. R., 120**

265. ————— *Agreement by one decree-holder to take by instalments.*—One of several joint decree-holders is not bound by the acts of another who has compromised with the judgment-debtor and agreed to receive payment by instalments. **BALGOBIND v. BHAWANEE DEEN SAHOO**

[1 Agra, Mis., 16]

EXECUTION OF DECREE—continued.**11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER—continued.****Joint decree—continued.**

See **INDURJEET v. SEWARAM alias MUNERAM** [5 N. W., 16]

266. ————— *Discharge by one of several joint decree-holders.*—The representatives of one of several decree-holders conveyed his interest in the decree to *A*. Some time afterwards *A*. filed a petition in Court, stating that the decree had been satisfied out of Court, and the case was thereupon struck out as far as he was concerned. Subsequently, the other decree-holders applied for execution of their share of the decree, but it was objected that the decree had already been satisfied by payment to *A*. *Held* that the other decree-holders were entitled to proceed with execution for the amount of their share, a joint decree-holder having no power to give a discharge out of Court to a judgment-debtor for more than his own share in the decree. **BUDHUN v. HAFEZAH** **4 C. L. R., 70**

267. ————— *Separate executions.*—*Execution of share of decree.*—Joint decree-holders are not entitled to apply separately for execution of the decree limited to what they consider their respective interests in it. **PRANATH MITTER v. MOTHOOBENAUTH CHUCKERBUTTY**

[6 W. R., Mis., 65]

INDURJEET KOONWAR v. MAZUM ALI KHAN

[6 W. R., Mis., 76]

RAM DAMODHUR DOSS v. BHOLANATH

[2 N. W., 413]

268. ————— *Application by one decree-holder for execution of share of decree.*—There is no provision of law which allows a decree-holder to apply for partial execution of a decree, nor any which allows several joint decree-holders to put in separate applications for execution of a decree in respect of their several shares. An application made by one of several joint holders of a decree enures for the benefit of all. **BALKISHOON v. MAHOMMED TAZAM ALLEE** **4 N. W., 90**

Contra, **CHOOA SAHOO v. TRIPPOORA DUTT**

[18 W. R., 244]

269. ————— *Complex decrees.*—*Application for execution of portion of decree.*—When a decree is of a complex nature and grants different kinds of relief to be obtained by process of different kinds, there is no valid objection to separate applications for partial execution of the decree. **RAM BAKSH SINGH v. MADAT ALI** . . . **7 N. W., 9**

270. ————— *Partial satisfaction.*—*Execution for remainder.*—The rule of law which forbids application for execution of part of a decree does not bar application for all that remains due upon a decree where the rest has been previously satisfied. **TEJ NARAIN CHATTERJEE v. RAM TUNOO MOJOOMDAR** **12 W. R., 370**

271. ————— *Execution of portion of decree.*—One out of several decree-holders

EXECUTION OF DECREE—continued.**11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER—continued.****Joint decree—continued.**

cannot execute a decree in respect of his own separate interest, or otherwise than the decree as a whole. In this case, however, the decree-holder was allowed to amend his application to execute the decree for his own share, and to convert it into an application to execute the whole decree. **JUDONATH ROY v. RAM BUKSH CHUTTANGER** . . . 7 W. R., 535

272. ———— *Application by joint decree-holder for execution of their share of a decree.—Notice of execution.*—Two out of several co-decree-holders applied to the Judge's Court to execute their share of a decree. *Held* that this was not an application upon which the Court would proceed in execution, and that it could not in appeal be changed into an application for an execution of their whole decree. **PURNOO CHUNDR A MOOKERJEE v. SARADA CHURN ROY**

[3 R. L. R., Ap., 21: 11 W. R., 241

NUBO KISHORE MOJOOMDAR v. ANUND MOHUN MOJOOMDAR . . . 17 W. R., 19

NUND COOMAR FOUTHERDAR v. BUNGO GOPAL SAROY . . . 23 W. R., 342

273. ———— *Civil Procedure Code, 1859, s. 207.—Execution of share of decrees.*—Though one of two or more decree-holders may, with the permission of the Court, take out execution of a joint decree under section 207, the execution must be for the whole decree, and not for any fractional share to which the decree-holder may consider himself entitled, the Court making such orders as may be necessary for protecting the interest of other decree-holders. **THAKOOR DOSS SINGH v. LUCHMEPUT DOOGUR** . . . 7 W. R., 10

JUGJEEBUN GOOPTO v. GOLOCK MONEE DEBIA
[22 W. R., 354

274. ———— *Civil Procedure Code, 1859, s. 207.—Parties.*—Where one of several persons entitled to the benefit of a decree seeks to have it executed without joining the others interested, his proper course is to apply to the Court under section 207 of the Civil Procedure Code, 1859. **AMATOOL RASSOOL v. LUTREFFUN** . . . 19 W. R., 302

275. ———— *Right of one of joint decree-holders to execution.—Civil Procedure Code, 1859, s. 207.*—A co-decree-holder has no right to claim execution unless he satisfies the Court, within the provisions of section 207, that there was sufficient cause for his asking to have execution alone; and in order to do this, the Court must hear all that the judgment-debtors have to urge against the application. **UMBITE NAUTH CHOWDHRY v. CHUNDER KISHORE SINGH** . . . 21 W. R., 31

276. ———— *Application by some of joint decree-holders for execution.—Civil Procedure Code, 1859, s. 206.*—All the judgment-creditors except one (H.) having applied for execution of a decree for costs against one of the judgment-

EXECUTION OF DECREE—continued.**11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER—continued.****Joint decree—continued.**

debtors, the answer was that she (the judgment-debtor) had paid all that was due from her under the decree to H., who had, under Act VIII of 1859, section 206, certified the fact to the Court. The Subordinate Judge, without enquiring into the allegation, allowed execution to issue. *Held* that the applicants, not being the whole of the decree-holders, had no right to make the application without showing sufficient cause for such a course,—*viz.*, either that they did not know of the alleged payment to H., and that, if made, it had been made to defraud them, or that the defendant was privy to the fraud. **NYNA KOORER v. DOOLEE CHUND** . . . 22 W. R., 77

277. ———— *Joint decree-holders.—Civil Procedure Code, 1859, s. 207.*—Where more persons than one are interested in a decree, any one or more of them may apply for execution of it under section 207, but the Court, in passing an order in execution of such decree, ought to protect the interests of other decree-holders, and such other person ought not to apply for second attachment of the same property under the same decree, but should apply to share in the proceeds realised by the sale in the execution which has been ordered. **ABID ALI v. MUNNOO BYAS**

[2 Agra, 183

278. ———— *Civil Procedure Code, 1859, s. 207.*—Where one of several holders of the same decree wishes to take out execution, his proper course is to apply under section 207, Act VIII of 1859, to execute the whole decree, and the Court, if it sees sufficient cause, may admit the application, passing such order as may be necessary for protecting the interests of the other decree-holders. **INDRO COOMAR DOSS v. MOHIMA MOHUN ROY** . . . 15 W. R., 159

AUSEHMOONISSA KHATOON v. AMHERMOONISSA KHATOON . . . 22 W. R., 204

FAEZ BUKSH CHOWDHRY v. SADUT ALI KHAN
[23 W. R., 282

279. ———— *Absence of some decree-holders.—Protection of interests of absent.*—Where some of the decree-holders in a joint decree apply for execution, the application may be refused or granted at the discretion of the Court, which is bound to see that injury is not done to the rights of absent decree-holders; but whether the Court does so or not, all recoveries in execution so made must be for the benefit of all the decree-holders. **SHIB CHUNDER DASS v. RAM CHUNDER PODDAR**

[16 W. R., 29

280. ———— *Execution by one creditor.*—A. and B. obtained a decree against C. A. obtained an order for execution of his share in the amount of the decree. C. pledged immovable property as security to A., who caused it to be sold. B. applied to the Court for her share of the sale-proceeds. The Principal Sudder Ameen refused

EXECUTION OF DECREE—continued.**11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER—continued.****Joint decree—continued.**

the application. On appeal,—*Held* that the order for execution ought, in express terms, to have reserved the rights of the other decree-holders to share in the proceeds of the execution. The case was sent back that the Principal Sudder Ameen might apportion the amount realised amongst all the decree-holders.

TARASUNDARI BURMONI v. BHABH LAL ROY

[I. B. L. R., A. C., 28

281.

Execution of portion of decree according to extent of the applicants' interest.

—The effect of a Privy Council judgment being that each of two co-plaintiffs was entitled to a moiety of a taluk in the possession of the defendant, who then purchased the interest of one of them,—*Held* that the other co-plaintiff could obtain execution according to the extent of her interest in the estate.

HURRIAH CHUNDER CHOWDERY v. KALI SUNDERI DEBI . I. L. R., 9 Cal., 482; 12 C. L. R., 511

[I. R., 10 I. A., 4

282.

Civil Procedure Code, 1859, s. 207.—Execution of portion of decree.

—A joint decree was passed in favour of A. and B., and A. subsequently applied for execution alone, alleging that B. would not join with him in the application. The judgment-debtor stated, and B. admitted, that more than half of the decretal money had been paid to the latter (out of Court), but the Court disbelieved the statement, and ordered execution to issue for the full amount of the decree. *Held* that the Court should, under section 207 of Act VIII of 1859, have allowed execution for half the amount of the decree only.

BRUJESWARI CHOWDERANEE v. TRIPPOORA SOONDAREE DEBI . 3 C. L. R., 513

283.

Application by one joint decree-holder for execution in respect of his own share.—Transfer of decree to judgment-debtor.

—*Civil Procedure Code, 1877, ss. 231, 232.*—A joint decree cannot be executed by one of the several joint holders in respect only of his share of the decree.

Ram Autar v. Ajudhia Singh, I. L. R., 1 All., 231; The Collector of Shahjahanpur v. Surjan Singh, I. L. R., 4 All., 72; and Haro Sanker Sandyal v. Tarak Chandra Bhattacharjee, 3 B. L. R., A. C., 114, followed. When by operation of law one of several joint judgment-debtors acquires the position of decree-holder in respect of the whole judgment-debt, the effect is to extinguish the liability of the other judgment-debtors, and the decree cannot be executed against them. But when one of them so acquires only a partial interest in the decree, the effect is not to extinguish the entire judgment-debt, but so much only of it as such judgment-debtor has so acquired. *Wise v. Abdool Ali, 7 W. R., 136; Pogose v. Fikrooddeen Mahomed Ahsan, 25 W. R., 343; In re Degumbures Dabes, B. L. R., Sup. Vol., 938; and Khoshalee v. Nund Lall, 6 N. W., 1, referred to.* *Held*, therefore, where one of several joint decree-holders applied for execution in respect of his own share only, and the joint judgment-debtors

EXECUTION OF DECREE—continued.**11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER—continued.****Joint decree—continued.**

under the decree had inherited the right therein of one of the joint decree-holders, that the application was contrary to law; that so much of the judgment-debt as had devolved upon such persons had been extinguished; and that application should have been made for execution in respect of the entire unextinguished portion of the judgment-debt. *Brojeswari Chowdhranee v. Tripoora Soondaree Debi, 3 C. L. R., 513; and Bibee Budhun v. Hafeezah, 4 C. L. R., 70, followed.*

BANARSI DAS v. MAHARANI KUAB [I. L. R., 5 All., 27

284.

Payment out of Court to one of several joint judgment-creditors.

—*Part satisfaction certified to the Court.—Application for execution of full amount of decree.—Civil Procedure Code (Act XIV of 1882), ss. 231, 244, 268.*—On an application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B., one of the joint decree-holders. The payment was made out of Court, but B., who claimed to be entitled to a 12½ annas share in the decree, certified the payment in the manner prescribed by section 268 of the Civil Procedure Code (Act XIV of 1882), and represented that his claim had been satisfied in full.

The other joint decree-holders denied B.'s right to the 12½ annas share claimed by him, and refused to recognise the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. *Held* that, regard being had to the provisions of the General Clauses Act (Act I of 1868), the word "decree-holder" in section 268 of Act XIV of 1882 should be read in the plural, and looking at the provisions of section 231 of the later Act, the Court ought not to recognise payments made out of Court, unless made and certified for the benefit of all the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled. *Held* also that a judgment-debtor is entitled to credit for any sum paid *bond fide* to one of several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. *Held*, further, that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B., and that it should have determined, *first*, whether the payment to B. was a fraud on the other joint decree-holders; and, *secondly*, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of section 244 of the Civil Procedure Code. *Nyna Koor v. Doolas Chund, 22 W. R., 77; Brojeswari Chowdhranee v. Tripoora Soondaree Debi, 3 C. L. R., 513; and Mahima Chandra Roy v. Pyari Mohan Chowdhry, 2 B. L. R.,*

EXECUTION OF DECREE—continued.**11. JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER—continued.****Joint decree—continued.**

Ap., 43. TARUCK CHUNDER BHUTACHARJEE v. DIVENDRO NATH SANYAL

[I. L. R., 9 Cal., 831; 12 C. L. R., 566]

285. ——— *Joint decree-holders.—Conditional decree.—Refusal of some to join in applying for execution.—Civil Procedure Code, s. 231.*—The provisions of section 231 of the Civil Procedure Code are not applicable to the case of joint decree-holders the execution of whose decree is conditional on their joint performance of a particular act. FARZAND v. ABDULLAH. I. L. R., 6 All., 69

286. ——— *Application by some of joint decree-holders.—Execution of portion of decree.*—Where two out of several decree-holders petitioned the Court to execute their share of the decree (which was for possession and mesne profits), and the other decree-holders, though they virtually joined in the application by signifying their consent, subsequently retracted their consent, and the original applicants declined to proceed with the execution of the decree for mesne profits, —Held that there was no application on the part of all the decree-holders to execute the decree for mesne profits, nor any application by some of them for execution of the whole decree, and that the Court's order directing realisation of the unpaid portion of mesne profits was passed without any proper application. *Quære*,—Can the purchasers of a share in a decree be added upon the record, under Act VIII of 1859, section 208, as co-decree-holders? SHETAPUT ROY v. ALI HOSSEIN [24 W. R., 11]

287. ——— *Civil Procedure Code, 1859, ss. 207, 208.*—When a decree is in favour of several persons, and out of those persons some transfer their interest to a third party, the Court would be competent to allow the purchaser to appear as co-decree-holder under Act VIII of 1859, section 208, or under sections 207 and 208 together, to allow him alone to execute the whole decree, if the Court were satisfied that the interests of justice required it. BRYNATH SAHOO v. DOOLAR CHAND SAHOO

[24 W. R., 245]

12. LIABILITY FOR WRONGFUL EXECUTION.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

See DAMAGES—SUITS FOR DAMAGES—TORTS.

288. ——— *Seizure in execution.—Trespass.—Liability of judgment-creditor.*—Seizure of personal property in execution of a decree is not an act of the Court, but one of the party himself seeking execution, for which he is liable if any trespass be committed on the property of a stranger. SUBJAN BIBI v. SARIATULLA

[3 B. L. R., A. C., 413; 12 W. R., 329]

EXECUTION OF DECREE—continued.**12. LIABILITY FOR WRONGFUL EXECUTION—continued.****Seizure in execution—continued.**

RASH BEHARY LALL v. WAJAN

[12 B. L. R., 203, note; 11 W. R., 516]

289. ——— *Liability of execution-creditor in damages for wrongful seizure.—Attachment of stranger's property.—Measure of damages.*—Certain unthreshed rice belonging to the plaintiff was wrongfully attached by the defendants, under a money-decree obtained by them against a third party. The attachment had been made under a warrant which specified the rice in question, and which had been issued upon a darkhast presented by the defendants in which they prayed for the attachment of this particular rice as their judgment-debtor's property. The rice, while in the custody of a bailiff of the Court masir in the place where it had been attached, was clandestinely threshed and carried off by thieves, who left the straw. In a suit brought by the plaintiff to recover the value of the unthreshed rice from the defendants, both the lower Courts dismissed the plaintiff's claim, on the ground that the theft was not the immediate or probable result of the attachment, and that the conduct of the defendants had not in any way conduced to the loss of the rice. Held by the High Court, reversing the decrees of the lower Courts, that the defendants were liable. When the wrongful seizure was made at the instance of the defendants, the plaintiff's cause of action was complete, and was independent of the subsequent occurrence. The theft might have rendered the defendants unable to restore the rice in specie, but could not purge, and was no satisfaction of, the previous trespass which rendered the defendants liable for the full value of the rice. GOMA MAHAD PATIL v. GOKALDAS KHEMJI. I. L. R., 3 Bom., 74

13. STAY OF EXECUTION.

290. ——— *Application for stay of execution.—Civil Procedure Code, 1859, s. 338.*—Application for stay of execution of a decree, an appeal from which has been filed, should, under Act VIII of 1859, section 338, be made to the Court of Appeal and not to the Court which passed the order under appeal. ABBASSEN BEGUM v. RAJ ROOP KOORE. 1 C. L. R., 368

291. ——— *Power to stay execution.—Civil Procedure Code, ss. 284, 290.—Decree transferred for execution.*—Where a decree of the High Court is transmitted to a Judge for execution under section 284, Act VII of 1859, and the judgment-debtor contends that the balance due on the decree is less than that for which execution is sought, the Judge has no jurisdiction to enquire into the question, but may, on cause shown under section 290, stay execution, pending a reference to the High Court. KISHUB CHUNDER PAUL CHOWDERY v. KHELAT CHUNDER GHOSH. 9 W. R., 361

292. ——— *Power of Court executing decree to go behind decree.—Question of ser-*

EXECUTION OF DECREE—continued.**18. STAY OF EXECUTION—continued.**

Power of Court executing decree to go behind decree—continued.

vice of notice.—Where an application is made by a judgment-debtor for stay of execution of an Appellate Court's decree, the Court executing the decree cannot enquire into the question whether any notice was served upon the applicant before the appeal judgment was passed. **MUKHDOOMUN v. BHUGWAN DASS** **24 W. R., 33**

293. ——— **Application by person not party to suit.**—*Civil Procedure Code, 1859, s. 230.*—The Court will not interfere to stay execution upon the application of a person not a party to the suit, who claims immoveable property liable to be taken under the decree. The remedy of such a person is under section 230 of Act VIII of 1859. **KHELAT CHUNDER GHOSH v. PRASUNMOYEE DASSHEE** [Marsh., 473]

294. ——— **Security.—Consent.**—Execution will be stayed only on security being given or by consent. **SAGORE CHUNDER CHUCKERBUTTY v. SHEERBOURN** **Bourke, O. C., 103**

295. ——— *Civil Procedure Code, 1859, s. 338.*—*Stay of execution pending appeal.*—*Act XXIII of 1861, s. 38.*—Pending the determination of the appeal against an order passed in execution of decree, the Appellate Court has power, under section 338 of Act VIII of 1859, and section 38 of Act XXIII of 1861, to stay execution. **IN THE MATTER OF THE PETITION OF HAB SHANKAR PARSHAD** **I. L. R., 1 All, 173**

296. ——— *Civil Procedure Code, s. 338.*—*Stay of execution.*—A party applying to stay execution of a decree under section 338 on giving security, is bound to show sufficient grounds to the Court for staying it, whether the decree is in respect of moveable or immoveable property. **IN THE MATTER OF THE PETITION OF ISMAIL KOORE** [R. L. R., Sup. Vol., 1007: 9 W. R., 443]

297. ——— *Act XXIII of 1861, s. 36.*—*Security for restitution of money.*—Before staying execution of a decree and preventing the decree-holder from receiving the fruits of his decree, or before requiring him under section 36, Act XXIII of 1861, to give security for its restitution, probable cause must be shown of the judgment-debtor's inability to recover the money if the decree be reversed. **SUKHEN MONEN DEBIA v. BROJORAJ MOOKERJEE** **17 W. R., 69**

298. ——— *Act XXIII of 1861, s. 36.*—*Security in execution of decree.*—*Decree against which no appeal brought.*—The High Court could not, under section 36, Act XXIII of 1861, direct the lower Courts to take security in the execution of a decree against which no appeal has been preferred to it. **IN RE BHUGWAN CHUNDER GHOSH** **6 W. R., Mis., 15**

299. ——— **Ground for staying execution.**—*Appeal, Refusal to execute pending.*—Exe-

EXECUTION OF DECREE—continued.**18. STAY OF EXECUTION—continued.**

Ground for staying execution—continued.

cution of a decree for enhanced rent should not be refused merely because the decree has been appealed against on a point of law. **THEODORUS v. ABOOL BURKUT AMBENGOOLAH**

[W. R., 1864, Act X, 106]

300. ——— The Court declined to stay the execution of a decree (1) because the applicant has not shown, as he was bound to show, something beyond the mere fact of an appeal having been preferred against it, and (2) because there seemed to have been great delay on his part. **LESLIE v. LAND MORTGAGE BANK OF INDIA**

[17 W. R., 160]

301. ——— *Expiry of time for appeal.*—*Power of Court to stay execution.*—*Code of Civil Procedure (Act XIV of 1882), ss. 239, 230, 243, and 246.*—It is not open to the Court to refuse to execute a decree against which no appeal has been preferred and the time for appealing against which has expired. **ISHAN CHUNDER ROY v. ASHAN-OOLLAH KHAN** **I. L. R., 10 Calc., 317**

302. ——— *Person sued as Government servant ceasing to hold that position.*—A decree was passed by the Principal Sudder Ameen against the defendant declaring him personally liable to the claim. No appeal was preferred. *Held* that an order by the Judge, staying execution because the defendant, who was sued as a servant of Government, had ceased to fill that position, was illegal. **MAHOMED TUQUEE BEG v. WALLIS**

[2 Agra, Mis., 5]

303. ——— *Refusal to pay costs of advertising sale.*—It is not within the discretion of a Court charged with the execution of a decree to withhold execution and abstain from selling because the decree-holder refuses to pay the costs of advertising. The Code does not require the decree-holder to pay such costs in advance. **KISTO KISHORE GHOSH v. SOORJONATH SIRCAR**

[10 W. R., 354]

304. ——— *Civil Procedure Code, 1859, s. 290.*—*Ex parte decree.*—A Principal Sudder Ameen is competent, under section 290, Act VIII of 1859, to allow the stay of execution of a decree of the High Court on its original side for a sufficient time to enable the judgment-debtor to make his application to the High Court for a new trial, on the ground that the decree had been obtained *ex parte* without his knowledge. **MIBTOONJOY CHUCKERBUTTY v. COCHRANE** **8 W. R., 202**

305. ——— *Likelihood of injury from immediate sale.*—Where a judgment-debtor proved that a sale in execution might be stayed, as material injury would otherwise be caused to him from the circumstance that the day fixed for the sale was so near to the latest safe day for the payment of the Government revenue.—*Held* that good and sufficient cause was not shown for staying the sale. **AHMED BEZA v. KHUJOORUNISSA**

[13 W. R., 281]

EXECUTION OF DECREE—continued.**18. STAY OF EXECUTION—continued.****Ground for staying execution—continued.**

306. ——— *Allegation of a private purchase by the decree-holder.*—While a decree for money was being executed by the sale of immoveable property, the judgment-creditor petitioned the Court to stay the sale for two days, as the defendants, the judgment-debtors, had entered into a raminamah with him. On the same day the judgment-debtors petitioned the Court to continue the sale for three days. Two days afterwards the judgment-creditor presented a petition to the Court, stating that the judgment-debtors had executed a note in his favour for Rs. 5,000 in part-payment of the decree, and promising to execute a deed of sale on a stamp; but a sum of Rs. 6,000 having been subsequently offered, the judgment-debtors failed to execute the deed of sale; and he prayed that the judgment-debtors might be examined in respect of the sale for Rs. 5,000, and that the sale to him be confirmed. The Civil Judge made an order refusing to accede to the prayer of the judgment-creditor. *Held* (INNES, J., dissenting) that the order of the Civil Judge was right, as he had no power to order stay of execution on the ground of a private purchase having been made by the decree-holder. **VENKATA NARASIMHA APPARAO v. VENKATAKRISHNIA NAIDU**

[5 Mad., 410]

307. ——— *Pendency of cross-suit.—Power of Court to which decree is transmitted for execution.*—*Civil Procedure Code, 1859, s. 209.*—Section 209 of Act VIII of 1859 provides that whenever a suit shall be pending in any Court against the holder of a decree of such Court by the judgment-debtor, the Court may, if it appears just and reasonable to do so, stay execution on the decree, either absolutely or on such terms as it may think proper, until a decree shall be passed in the pending suit. Any Court, to which a decree is transmitted for execution, can under the section stay execution, notwithstanding that the suit pending between the judgment-debtor and the holder of the decree is pending in such Court, and not in the Court which transmitted the decree. **COOKE v. HISEBIA BREWER**

6 N. W., 181

308. ——— *Appeal pending in another suit.*—*Civil Procedure Code, Act XIV of 1882, s. 546.*—*A.* brought a suit and obtained a decree against *B.* on a mortgage bond in the Court of a Subordinate Judge, which decree was confirmed by the High Court on appeal. *A.* then applied for execution. In the execution proceedings the sons of *B.* intervened claiming a portion of the properties attached; this claim was dismissed, and the sons of *B.* brought a regular suit before the same Subordinate Judge to have their rights to the property declared, and obtained an *interim* injunction restraining *A.* from executing his decree pending the decision of their suit. This suit was dismissed, and the sons of *B.* appealed to the High Court. *A.* again applied for execution of his mortgage decree, whereupon the sons of *B.* applied for a further injunction restraining *A.* from executing his decree pending their appeal to the High Court: this

EXECUTION OF DECREE—continued.**18. STAY OF EXECUTION—continued.****Ground for staying execution—continued.**

application was granted. *Held* that the Subordinate Judge had no right to restrain the decree-holder from executing his decree, merely on the possibility of the Appellate Court reversing his decision. **GOSSAIN MONEY PURSE v. GURU PERSHAD SINGH**

[I. L. R., 11 Cal., 146]

309. ——— *Powers as to stay of execution of Court executing transferred decree.*—*Civil Procedure Code, ss. 228, 239.*—The powers which the foreign Court has, under section 228 of the Civil Procedure Code, are confined to the execution of the decree, and the Court cannot question the propriety or correctness of the order directing execution, nor can it, with reference to section 239 of the Code, stay execution except temporarily. *Held*, therefore, where the drawers of a hundi against whom the indorsee from the payee had obtained a decree on the hundi, objected in the Court to which the decree had been transmitted for execution that execution should not be allowed, because the payee had paid the amount of the hundi to the decree-holder, after the decree had been passed, and such Court refused to entertain the objection, that the order of the lower Appellate Court directing that the parties should be allowed to produce evidence in regard to the alleged payment, and that, should the Court of first instance find that the decree-holder had received satisfaction to the full amount of the decree, the judgment-debtors should be absolved from all liability under the decree, could not be maintained. **RAM LAL v. RADHEY LAL**

[I. L. R., 7 All., 330]

310. ——— *Injunction to stay execution.—Relief asked for in accordance with statements in plaint not forming a separate prayer in the plaint.—General prayer for relief.—Control of execution.*—*A.*, a joint owner of an estate with *B.*, saved the joint estate from sale for arrears of Government revenue, in payment of which *B.* had made default, for such purpose mortgaging her share in the estate to *E.* *A.* then sued *B.* for contribution. Pending that suit, *B.* again made default, and the estate was sold and purchased by *C.*, subject to incumbrances. Subsequently *A.* obtained her decree against *B.* and assigned her decree to *D.*, who obtained an order for execution, and attached certain property belonging to *B.* *D.* and *E.* then entered into an agreement with *C.* that they would release *C.* and the share charged with payment of *A.*'s decree from all liability, and that they would entrust the whole conduct of the execution proceedings to *C.* in consideration of his granting a perpetual lease of part of the property to *D.* and *E.* In pursuance of this agreement, *D.* and *E.* granted a release to *C.*, and *C.* granted a lease to *E.* for himself, and it was contended, also as benamidar of *D.* The agreement contained a proviso that should the Court, in which the decree should be executed, of its own accord or on the petition of *B.* or his legal representative, notwithstanding objection on the part of *D.* and *E.*, make any order directing the decree to be executed against the estate, then in such case *D.* and *E.* should not be bound by

EXECUTION OF DECREE—continued.**13. STAY OF EXECUTION—continued.****Injunction to stay execution—continued.**

the release, and that it should be open to *C.* to cancel the agreement. *D.* applied for execution against the estate of the adopted son of *B.* (who had died), but subsequently abandoned all proceedings and transferred his decree to the High Court to obtain execution against a house belonging to *C.* in Calcutta. The adopted son and widow of *B.*, in a suit brought against *C.* and *D.*, objected to the execution proceedings, and after paying the sum due to *D.* into Court, asked for an injunction staying all further proceedings in execution until the hearing of the suit. *Held* that *D.* had obtained, out of the lien directed by the decree, some benefit or advantage, which the plaintiffs might have a right to have valued at the hearing, and that, notwithstanding this did not form the subject of a separate prayer in the plaint, the Court would grant the injunction. *KRISTO MOHINNY DOSSES v. KALLY PROSONNO GHOSH*

[I. L. R., 6 Calc., 485; 8 C. L. R., 43]

311. ——— Decree made by mistake and without jurisdiction.—*Decree in suit against Sovereign Prince.*—A suit was brought against the Thákúr of Palitána (his title being omitted from the plaint), and an *ex parte* decree was obtained against him. An application on the part of the Thákúr to have the decree set aside was dismissed, and the plaintiff then sued out an attachment, but, failing to execute it within a year, was compelled to apply to the Court, under section 216 of the Code, for leave to execute it. The defendant at the same time applied to have the attachment and all proceedings under it declared null and set aside on the ground that it had been made by mistake and without jurisdiction. The Court (without expressing an opinion as to whether the order dismissing the application to have the decree set aside would have prevented it from declaring the decree void *ab initio*) held that as the decree was made erroneously and without jurisdiction it would not, when apprised of the error, assist the plaintiff in carrying it into execution in a case in which lapse of time made it incumbent on the plaintiff specially to invoke the aid of the Court for that purpose. *LADKUVARBAI v. SANSANGI PARTABSANJY*

[7 Bom., O. O., 150]

312. ——— Modification or cancellation of security bond.—*Civil Procedure Code, s. 338.*—*K.* sued *E.* for a sum of money due on promissory notes, and obtained a decree in the Judge's Court. *E.* appealed to the High Court and prayed that execution might be stayed till the appeal was disposed of. The Court, under the provisions of section 338, Code of Civil Procedure, ordered that execution might be stayed, provided good and sufficient security were given. Accordingly *A.* appeared before the Judge and executed a security bond binding himself, in the event of the appeal being dismissed, to liquidate the debt. The appeal was heard by a Division Bench, and, the Judges differing, the opinion of the senior Judge prevailed under 36 of the Letters Patent, and the appeal was decreed. From this judgment an appeal was preferred under section 16 to a

EXECUTION OF DECREE—continued.**13. STAY OF EXECUTION—continued.****Modification or cancellation of security bond—continued.**

Full Bench. After the opinion of the Division Bench was pronounced, *A.* applied to the Judge for the return of his security bond; but his application was refused pending the final decree of the High Court in the matter. He then moved the High Court for the cancellation or return of the bond. *Held* that as the High Court had authority under section 338, Act VIII of 1859, to make an order calling for security, it had authority at any time to modify or cancel such order, or to direct the restoration of the security when no longer required, and that in carrying out the Court's order to take security and enquire into its validity, the Judge was acting, not judicially but ministerially. *Held* also, that as the decree of the Judge had been reversed by the Bench who tried the appeal, there was no decree of the Judge to execute, and the Judge's order refusing to return the security bond was passed without jurisdiction, and was therefore null and void. On the reversal of the decree, the liability of the surety ceased, and the security bond became a dead letter. *AMIR ALI v. KASIM ALI KHAN*

13 W. R., 403

313. ——— Decree directing sale of land in pursuance of a contract specifically affecting it.—*Civil Procedure Code, 1877, s. 326.*—*Stay of sale.*—Section 326 of Act X of 1877 does not apply to a decree which directs the sale of land or of a share in land in pursuance of a contract specifically affecting the same. The Court, therefore, cannot authorise the Collector to stay the sale in such a case under section 326. *BHAGWAN PRASAD v. SHRO SARAI*

I. L. R., 2 All., 856

314. ——— Scheme for satisfying decree.—*Civil Procedure Code, Act X of 1877, s. 326.*—*Stay of public sale of attached property.*—Where the Collector has applied to the Court under section 326 of the Civil Procedure Code, proposing a scheme for the payment of decretal money in order to avoid a sale of attached property, it is in the discretion of the Court to authorise the Collector or not, as it thinks fit, to provide for the satisfaction of the decree in the manner proposed; and the Court is bound to hear any objections which may be made by the decree-holder to the feasibility of the proposed scheme, and any evidence that may be offered in support of those objections; and if after hearing the decree-holders' objections, and the evidence which may be offered in support of them, the Court is not fully satisfied that the proposal is feasible, or that it can, in all reasonable probability, be carried out within the specified period, the Court ought, in the exercise of its discretion, to refuse its sanction. *HURO PRASAD ROY v. KALI PRASAD ROY*

[I. L. R., 9 Calc., 290]

315. ——— Security for restitution of property.—*Act XXIII of 1861, s. 36.*—After property, the subject of litigation, has been given over in execution of a decree to the plaintiff, it is not within the scope of section 36 of Act XXIII of 1861,

EXECUTION OF DECREE—continued.**13. STAY OF EXECUTION—continued.****Security for restitution of property—continued.**

to exact security from the plaintiff for the restitution of such property in the event of a successful appeal. **MANSUKHRAM PURSHOTAM v. JAYABHOVU**

[7 Bom., A. C., 122]

316. ——— Reversal of decree in favour of plaintiff.—Civil Procedure Code, 1859, s. 338.—Duty of Appellate Court.—When an Appellate Court reverses a decree in favour of the plaintiff in a suit, it ought not to stay execution of its own decree under section 338 of Act VIII of 1859. Order of District Court staying execution under such circumstances set aside. **KAVASJI BHUNJI v. DHONDIRAJ VINAYAK** 10 Bom., 411

317. ——— Reversal of decree on appeal, Effect of.—Security by decree-holder on being allowed to execute decree appealed from.—Where a decree-holder pending appeal gives a security bond, whereby he undertakes that if the decision of the first Court is reversed or modified by the Appellate Court he will make good any property taken by him in execution the effect of such an undertaking is to bind him in the event of the Appellate Court deciding that the claim of the creditor was in whole or in part untrue, to make good to the other party anything taken in respect of the amount so found not due. The bond would not bind the decree-holder to conform to a mere direction as to the manner in which the decree was to be executed, when that direction came too late, but would need to be construed equitably, and the other party, if still a debtor to the decree-holder, would not be entitled to recover anything unless it were shown that he had sustained damage. **SHURY-UTOOLAH MIRDHA v. TENTA GAZER HOWLADAR** [21 W. R., 52]

318. ——— Execution completed by appointment of manager.—Civil Procedure Code, 1877, s. 545.—It having been directed by a decree that pending an appeal managers should be appointed to take charge of certain property, managers were appointed and they took possession of the property in question. On a rule to show cause why execution should not be stayed and the managers removed,—Held that under section 545 of the Civil Procedure Code the Court had power only to stay execution, and that the words "stay execution" in that section could not be extended to a case in which execution was completed, as in the case before it. **DHARRAM SINGH v. KISHEN SINGH** [12 C. L. R., 532]

319. ——— Setting aside proceedings giving possession under decree.—Civil Procedure Code, 1882, s. 243.—Possession given under decree.—There is no provision in the law which empowers the Court passing a decree to set aside the proceedings under which the decree-holder has already been placed in possession in execution of his decree. The provisions of section 243 of the Civil Procedure Code (providing for stay of execution) have no reference to a case in which execution has already been

EXECUTION OF DECREE—continued.**13. STAY OF EXECUTION—continued.****Setting aside proceedings giving possession under decree—continued.**

carried out, and the decree-holder placed in possession of the property decreed to him. **GHAZIDIN v. FAKIR BAKSH** I. L. R., 7 All., 73

320. ——— Right of judgment-debtor in giving security.—Amount of security.—Where a judgment-debtor asks for stay of execution proceedings pending appeal and his request is granted on condition of his giving security, he is entitled to have a reasonable opportunity for showing that the sum demanded as security is considerably more than the amount awarded by the decree. **BAHOORIA DOOHMA KOWAR v. LALLA JUWAHUR LALL PAUREY** [20 W. R., 52]

321. ——— Security bond.—Amount of security.—Order staying execution pending appeal.—Civil Procedure Code, Act XIV of 1852, ss. 545, 588.—The Court which passed a certain decree for specific performance of a contract to execute a mortgage on property worth 4½ lakhs of rupees ordered execution thereof to be stayed pending appeal, on the debtor's furnishing security to the amount of ₹70,000, under the provisions of section 545 of the Code of Civil Procedure. The debtor objected to the amount of security required, and appealed to the High Court on that ground. Held, on the facts, that the security required was excessive and it was reduced to ₹7,000. **UDRAYDETA DEB v. GREGSON** [I. L. R., 12 Cal., 624]

14. STRIKING OFF EXECUTION PROCEEDINGS.

322. ——— Striking off execution order, Effect of.—Abandonment of proceedings.—Striking off an execution order from the file is an act which may admit of different interpretations according to the circumstances of the case, and is not conclusive proof that such execution proceedings were intended to be abandoned. **HURRONATH BHUNJO v. CHURNI LALL GHOSH** [I. L. R., 4 Cal., 877; 3 C. L. R., 161]

RADHAKISSORE BOSH v. AFTAB CHUNDRAN MAHATAB [I. L. R., 7 Cal., 61]

323. ——— Striking execution case off the file.—Act VIII of 1859, ss. 110 & 114.—There is no particular law authorising the Court to strike cases for execution of decrees off the file. This can only be done under the provisions of sections 110 and 114 of Act VIII of 1859. The practice of striking off execution cases from the file, in order to clear it and enable judicial officers to make their quarterly returns, strongly condemned, as productive of the greatest hardship and injustice to the suitors. **GOUB MOHAN BANDOPADHYA v. TARACHUND BANDOPADHYA** 3 B., L. R. Ap., 17; 11 W. R., 567

Contra, see RAJPAL v. CHOAMUN . 4 N. W., 10 where section 110 of Act VIII of 1859 was held to apply to proceedings in execution of a decree.

EXECUTION OF DECREE—continued.**14. STRIKING OFF EXECUTION PROCEEDINGS—continued.****Striking execution case off the file—continued.**

324. ———— *Effect of, as to continuance of suit.*—It is contrary to general principles and a senseless addition to all the vexations of delay in the course of procedure to hold that when, for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose are to be considered as taken in a new suit. **MOHESH NARAIN SINGH v. KISHRAMUND MISSEB.** 5 W. R., P. C., 7 [2 Ind. Jur., O. S. 1: Marsh., 592: 9 Moore's I. A., 324

325. ———— *Effect of, on rights of parties.*—Striking off execution proceedings not being in accordance with the provisions of the Code, but merely for the convenience of the Court, when such proceedings are struck off on the motion of the Court, the rights of the parties to the proceedings are in no way affected. **BARODA SUNDARI DABIA v. FERGUSON** . . . 11 C. L. R., 17

SIAM SINGH v. BAIDYANATH RAI
[18 C. L. R., 176

326. ———— *Effect of, on rights of parties.*—The rights of the parties to execution proceedings are not affected in any way by the case being "struck off" by the Court, there being no provision in the Civil Procedure Code for such a course. **Baroda Soondari Dabia v. Ferguson**, 11 C. L. R., 17, followed. The only proper mode of dealing with a case, whether a regular suit or a miscellaneous proceeding, when the parties do not appear, is to dismiss it. A case so dismissed can be restored on application under section 108, which is by section 647 applicable as well to execution proceedings as to suits and appeals. **BISWA SONAN CHUNDER GOSWAMY v. BINANDA CHUNDER DIBINGAR ADHIKAR GOSWAMY** . . . I. L. R., 10 Cal., 416

327. ———— *Jurisdiction of Principal Sudder Ameen.*—Act V of 1836.—The jurisdiction of a Principal Sudder Ameen to deal with a decree referred to him for execution by the Zillah Judge under Act V of 1836 did not cease by his striking the case off his file after partial execution, so as to render necessary a subsequent reference by the Judge to enable the Principal Sudder Ameen, upon a fresh application being made for execution, to restore the case to the file. **GOURMONEE DASSEN v. JOGUTINDRONARAIN** . . . 18 W. R., 319

Affirming decision of lower Court in
[2 W. R., Mis., 2

328. ———— *Order for sale.*
—Application for execution struck off.—Application for restoration.—Finality of order.—A decree for money was passed on the 19th March 1865. The first application for its execution, made after Act X of 1877 came into force, was dated the 16th Decem-

EXECUTION OF DECREE—continued.**14. STRIKING OFF EXECUTION PROCEEDINGS—continued.****Striking execution case off the file—continued.**

ber 1878. On this application an order was made by the Court executing the decree (Munsif) for the sale of certain property belonging to the judgment-debtor. The latter objected to the execution of the decree, on the ground of limitation, and the decree-holders filed an answer to the objection. On the 14th July 1879, the case was struck off, because the decree-holder had not deposited certain process-fees, without the disposal of the objection. On the 1st October 1879, the decree-holders again applied for the sale of the property, and it was ordered to be sold. On the 17th February, the judgment-debtor presented a petition repeating the objection, which, on the 18th March 1880, the Munsif entertained and disallowed. This order was affirmed in appeal by the District Judge, and again by the High Court. Meanwhile, the Munsif had struck off the case from the file of execution cases pending in his Court, on the ground that the records had been despatched to the Appellate Court. On the 18th September 1882, the decree-holder again applied for execution of the decree, praying that "the suit might be restored to its number, and that the judgment-debt might be caused to be realised by attachment and sale of the judgment-debtor's property specified in the former schedule." Held that the decree-holder was entitled to execution of the decree, and that he could get it under the application which was made on the 1st October 1879, inasmuch as the matter was made *res judicata* by the decree of the High Court in appeal, and it must be taken that that decree was correctly passed, and that the order for sale passed upon it was properly made, and that the sale ought to have taken place. Held also that the proper application for the decree-holder to have made in September 1882 was that the case might be restored to the Munsif, and that the present application might be so dealt with as to effect the same result, because the prayer contained therein referred to the number of the proceedings of October 1879, and to the schedule of the property then ordered to be sold. **JAWAHIR SINGH v. JADU NATH** . . . I. L. R., 7 All., 439

EXECUTION OF DOCUMENTS, PROOF OF—

See EVIDENCE ACT, 1872, s. 90.
[I. L. R., 3 Cal., 557
I. L. R., 6 Cal., 209

EXECUTION CREDITOR, LIABILITY OF—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY . . . I. L. R., 1 Cal., 55
[I. L. R., 2 Bom., 258

EXECUTOR—

See ATTORNEY AND CLIENT.
[3 B. I. R., O. C., 96

EXECUTOR—continued.

See CERTIFICATE OF ADMINISTRATION—
ISSUE OF AND RIGHT TO CERTIFICATE.
[3 B. L. R., A. C., 46]

See COMPROMISE—CONSTRUCTION, EN-
FORCING, EFFECT OF AND SETTING ASIDE
COMPROMISE . I. L. R., 6 Calc., 687

See HINDU LAW—WILL—CONSTRUCTION
OF WILL—GENERAL RULES.
[I. L. R., 2 Bom., 368]

See MAHOMEDAN LAW—DEBTS.
[I. L. R., A. C., 172]

See MAHOMEDAN LAW—WILL.
[4 N. W., 106]

See PROBATE—EFFECT OF PROBATE.
[I. B. L. R., O. C., 24
2 B. L. R., O. C., 1
I. L. R., 7 Bom., 266
I. L. R., 8 Bom., 241]

See PROBATE—ADMINISTRATION BONDS.
[I. L. R., 7 Calc., 84]

See PROBATE—TO WHOM GRANTED.
[7 B. L. R., 563
7 Bom., A. C., 64
I. L. R., 5 Calc., 756]

See REPRESENTATIVE OF DECEASED
PERSON . I. L. R., 4 Calc., 342

See TRUSTEE . I. L. R., 10 Bom., 468

———— Assignment to—

See LEGACY . I. L. R., 1 All., 753

———— Decree against—

See SUCCESSION ACT, s. 282.
[12 B. L. R., 267]

———— de son tort.

See REPRESENTATIVE OF DECEASED
PERSON . 2 Ind. Jur., N. S., 234

———— Obtaining second grant of Pro-
bate.

See COURT FEES ACT, SCH. 1, CL. 11.
[I. L. R., 3 Calc., 733]

———— Purchase from—

See VENDOR AND PURCHASER—PUR-
CHASERS, RIGHTS OF—
[10 B. L. R., 271, note]

———— Removal of, for infidelity.

See MAHOMEDAN LAW—WILL.
[I. B. L. R., S. N., 16]

———— Renunciation by—

See WILL—RENUNCIATION BY EXECUTOR.
[I. L. R., 4 Calc., 508]

EXECUTOR—continued.

———— Rights of—

See HINDU LAW—WILL—CONSTRUCTION
OF WILL—SPECIAL CASES—VESTED AND
CONTINGENT INTERESTS.

[I. L. R., 1 Bom., 269
1 Ind. Jur., O. S., 37; 4 W. R. P. C., 114;
6 Moore's I. A., 526]

1. ——— Rules and decisions of Court
of Chancery as to executor.—*Omission in will of
directions as to conversion by executor.—Liability of
executor.*—The rules and decisions of the Court of
Chancery in England, relative to the duty of an ex-
ecutor to convert, in the absence of any special direction
to that effect in the will, do not, without great quali-
fications, apply in the High Court of Bombay, and the
Supreme and High Courts of Bombay have not, by any
general rule or uniform practice, adopted any Govern-
ment security accessible to a private executor or trust-
ee in such manner as to form an authoritative guide
to him in his administration of the estate. Therefore,
where the will of a Portuguese testator contained no
special direction for conversion, nor any sufficient in-
dication of an intention on the part of the testator
that the residuary devisees and legatees should enjoy
the residue successively in specie, so as to exempt the
executors from the duty of conversion, and the execu-
tors did not convert certain shares belonging to their
testator, which subsequently became much depreciat-
ed in value,—*Held* that the executors were not liable
for the loss so occasioned to the estate of the testator.
DESOUZA v. DESOUZA . . . 12 Bom., 184

2. ——— Derivative executor.—*Succes-
sion Act (X of 1865).*—Under the Succession Act the
executor of an executor is not derivative executor of
the original testator, even though such testator died
before 1866. *DESOUZA v. SECRETARY OF STATE FOR
INDIA* . . . 12 B. L. R., 423

3. ——— Express trustee.—*Limitation
Act, XIV of 1859, s. 2.—Trustee for heirs.*—An
executor, who by the will is made an express trustee
for certain purposes, is, as to the undisposed-of resi-
due, a trustee within the scope of section 2 of Act
XIV of 1859 for the heir or heirs of the testator.
LALLUBHAI BAPUBHAI v. MANJUVARBAI
[I. L. R., 2 Bom., 368]

4. ——— Executor also legatee under
will.—An executor of a will is not obliged in this
country, as in England, to shed his character of exe-
cutor before he can appear in the new character
of legatee. *BAGOO JAN v. CHOWDERY ZUHOORUL
HUQ* . . . 13 W. R., 69

5. ——— Liability of executor for de-
vastavit by co-executor.—*Held per NORMAN,
J. (PHEAR, J., dissenting),* that an executor who
takes no share in the administration of his testatrix's
estate is nevertheless liable for the loss occasioned by
his co-executor neglecting to get in the assets. *Per
PHEAR, J.*—In order to make one executor liable for
devastavit committed by his co-executor, there must be
a distinct allegation in the plaint that the devastavit

EXECUTOR.—Liability of executor for devastavit by co-executor—continued.

has been committed by the co-executor to the knowledge of the executor. *GREENWAY v. HOGG*

[*Bourke, A. O. C., 111: Cor., 97*

In the same case in the Court below, it was held by *LEVINGS, J.*, that an executor will not be held liable for devastavit if the will was so framed as to mislead him, and he was not called upon to act differently from his own views by any parties taking an interest under the will. *HOGG v. GREENWAY*. 2 Hyde, 8

6. ——— Power of executor of Hindu will.—The executor of a Hindu will has no power by acknowledgment to revive a debt barred by limitation except as against himself. *GOPALNARAIN MOZOOMDAR v. MUDDOMUTTY GUPTA*

[14 B. L. R., 21

7. ——— Power of executor to pay barred debt.—An executor may pay a debt justly due by his testator though barred by the Statute of Limitation, and will in equity be allowed credit for such payment. *TILLAKAND HINDUMAL v. TILAMAL SUDARAM*. 10 Bom., 208

8. ——— Renunciation of executorship.—Fiduciary relationship.—Administration suit.—*Suit against purchaser from executor to set aside sale.*—*D.*, a Hindu, died, leaving three sons, *S.*, *S. C.*, and *E.*, who, on his death, made a partition of his estate, and *S.* covenanted with *S. C.* to discharge all claims made against the estate of *D.* In 1828, *B.*, who claimed a portion of the share taken by *S. C.* on partition with meane profits, filed a bill in the Supreme Court against *S. C.* and others, as representatives of *D.*, and obtained a decree for Rs2,00,000. Pending this litigation *S. C.* died, leaving six sons, *J.*, *M.*, *H.*, *P.*, *C.*, and *S. M.*, and a will made before the birth of *S. M.*, by which he left all his property to his sons other than *S. M.* On the death of *S. C.*, *J.*, as one of the executors of his will, compromised *B.*'s suit, so far as it related to the estate of *S. C.*, for Rs80,000; and afterwards, in the same capacity, sued the representatives of *S.* to recover that amount and the costs in the suit brought by *B.*, and obtained a decree for Rs1,70,000. In the meantime, *H.* died, leaving the plaintiffs; his sons and heirs, and his brothers *J.* and *M.*, his executors. *J.* renounced the executorship. *M.*, on the 3rd June 1854, as executor of *H.*, executed a deed of assignment, by which he conveyed to *J.* and *S. M.*, for Rs5,000, the interest of the plaintiffs in the decree obtained by *J.*, and subsequently, at a sale of property belonging to the representatives of *S.* in execution of the decree, *J.* himself became the purchaser. In 1857, in an administration suit, which had been brought by the plaintiffs to compel *M.* to account for the assets received by him from the estate of *H.*, the master was directed to take an account, which was accordingly done. In a suit brought by the plaintiffs, the sons of *H.*, against *J.*, *M.* and *S. M.* to set aside the deed of 23rd June 1854,—*Held* that, notwithstanding the renunciation of executorship by *J.*, he stood in a fiduciary relation to the plaintiffs, and the assignment being found to have been made for an inadequate consideration, was ordered to be set aside on

EXECUTOR.—Renunciation of executorship—continued.

the plaintiffs paying the purchaser *J.* the amount of the purchase-money. A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father's will, by whom the sale had been made, held to be no bar to the maintenance of a suit against the purchaser to have the sale set aside. *DHONENDER CHUNDER MOOKERJEE v. MUTTY LALL MOOKERJEE*

[14 B. L. R., 276: 23 W. R., 6
L. R., 2 I. A., 18

9. ——— Liability of executor for funeral of testator.—Although the executor defendants first gave orders for a third-class funeral for the deceased, yet, as they by their conduct induced the plaintiff to furnish a second-class funeral, they were held liable to pay for the same, whether they had assets or not. *PAUL v. DONOHAY*

[6 W. R., Civ. Ref., 27

10. ——— Power of executor.—Hindu will.—Mortgage.—*Per MARKEBY, J.*—The executors of the will of a Hindu cannot, by virtue of their character as executors, mortgage the estate of the testator, in the absence of any power, express or implied, contained in the will. *NILKANT CHATTERJEE v. PRADEY MOHAN DAS*

[3 B. L. R., O. C., 7: 11 W. R., O. C., 21

11. ——— Hindu will.—Mortgage.—Liability of estate for loan.—When, in order to save an estate from sale in execution of a decree against the testator, his executor raised a loan from the plaintiff giving him a mortgage of the testator's property,—*Held* that even if the executor had funds to pay the plaintiff the debt without raising a loan, that fact would not invalidate the plaintiff's claim against the estate unless there was good reason to infer that he knew of those funds or might have known of them if he had used ordinary diligence in making enquiries on the point. *KALSH NARAIN ROY CHOWDHRY v. RAM COOMAR CHAND*

[W. R., 1864, 89

12. ——— Manager under Hindu will.—Power of mortgage and borrowing money.—*E. E. D.* died possessed of certain property in Calcutta, and left him surviving *S. D.*, widow of his son *J. C.*, deceased, and three granddaughters, upon whose marriages he directed *H. P.*, his executor, to expend Rs1,600, and to pay his debts, &c.; and further directed that if there should not be money forthcoming for the purposes specified in the will, that the property should be sold to make up the deficit. *H. P.* expended on the marriages much more than was limited by the will, and for this purpose mortgaged the property to *T. C.* and others, who were proceeding to foreclose when *S. D.* sued to have the mortgage-deed set aside as against the heir of *E. E. D.*, which she claimed to be, through *U. S.*, deceased, whom she had adopted under a direction in the will of her husband that she should adopt three sons in succession, a direction which *H. P.* was enjoined by *R. E. D.*'s will to see carried out. The mortgagee resisted her claim on the grounds that she had not adopted a second son, that the powers of sale

EXECUTOR.—Power of executor—continued.

to *H. P.* included a power of mortgage, and that the property was necessarily mortgaged for family purposes. Judgment was given for the plaintiff. *Held* that *B. E. D.* had no power to mortgage the property; that an attorney or executor under a Hindu will has not the same power over a testator's estate as an executor would have over leasehold estate according to English law; that according to Hindu law, a manager or an executor under a will has only a limited and qualified power over the immoveable estate of the testator; that the general power of a manager under a will may be restricted by the will; that a manager under a will is bound to act according to the directions in the will; and that where an attorney or manager under a will has power to mortgage for specific purposes, it is the duty of the mortgagees to enquire into the circumstances under which, and the authority upon which, the mortgage was effected. That when a will directs a certain sum to be expended for marriage purposes, the manager or executor has no power to expend a larger sum thereon; that a mortgagee having notice of such a bequest is not justified in lending a larger sum for that purpose; that a direction in a will to sell houses, and invest the surplus proceeds in Government securities, does not authorise the executor to borrow money at a high interest, and amounts to a direction not to mortgage the houses; that when a plaintiff seeks to set aside a mortgage, on the ground that the mortgagor had no power to mortgage, and that the mortgagees had acted fraudulently, the Court can grant relief even if the fraud be not made out, the issue as to the mortgagor's power to mortgage being found in favour of the plaintiff. *SRINMUTTY DOSSEN v. TARACHURN COONDOD CHOWDEBY*

[*Bourke, A. O. C., 48: 3 W. R., Mis., 7, note*

13. ———— *Succession Act (X of 1865), s. 269.—Mortgage.—Power of sale.*—Certain persons, being executors of the will of an Englishman domiciled in India, such will having been made after the Succession Act came into operation, and charging the testator's estate with the payment of his debts, having as such executors borrowed certain moneys from a bank wherewith to discharge debts incurred by them in the administration of the estate of the testator, gave as such executors to such bank a bond for the payment of such moneys on a certain date. By a second instrument, bearing the same date as the bond, they mortgaged as such executors aforesaid to the manager of such bank all their right, title, and interest in certain real estate of the testator as security for the payment of the moneys, authorising and empowering, in default of payment of the same, the manager, his successors or assigns, absolutely to sell such real estate, either by private sale or public auction, for the realisation of the moneys, and to sign a conveyance or conveyances, and a receipt or receipts for the purchase-money, and declaring that such conveyance or conveyances, receipt or receipts, should be as valid as if the same were signed by them. By a third instrument, bearing the same date as the other two, they as such executors aforesaid constituted the

EXECUTOR.—Power of executor—continued.

manager of the bank for the time being their true and lawful attorney for them, and in their names and as their act and deed to sell such real estate and to do all acts necessary for effecting the premises. Default having been made in payment of the moneys, by an instrument in writing which recited the instruments already mentioned, the manager of the bank for the time being, described as such, in the exercise of the power of sale and for the purpose of reimbursing to the bank the moneys, granted and conveyed to *B.* such real estate and all the estate and interest therein of the executors freed from the mortgage above recited, and the manager for the executors executed the usual covenants for title and further assurance. *B.*, having been resisted in obtaining possession of such real estate under such conveyance by a legatee of the testator, sued the legatee and the executors for a declaration of right to, and for possession of, such real estate in virtue of such conveyance. The legatee contended that the executors had no authority to confer a power of sale. *Held* (*STUART, C. J.*, dissenting) that the executors had such authority under section 269 of the Succession Act, and that the conveyance was accordingly valid and operated to transfer the property to *B.* *SEALE v. BROWN* . . . *I. L. R., 1 All., 710*

14. ———— *Power of, to charge estate of testator.*—*H. K.* died on the 5th July 1871, leaving two widows, *J.* and *A.*, and one son (the defendant), him surviving. By his will he appointed *D.* his executor, and named the defendant his residuary legatee. At the time of his death, *H. K.* was indebted to *M.* in a large amount, for which *M.* held mortgages on his property. On the 5th March 1873, *M.*'s debt amounted to Rs1,83,631, and it was agreed between *M.* and *D.* as executor, that the mortgaged property (estimated at one lakh in value) should be made over to *M.* absolutely in part payment, and that *D.* should become personally liable to her for the balance of Rs33,631 with interest at 9 per cent. payable within twelve months. In consideration thereof *M.* was to release *D.* as executor and the defendant from liability for the sum of Rs1,83,631. An indenture carrying out this agreement was executed on the same day, and *D.* gave a bond making himself personally liable to *M.* for Rs33,631. Shortly afterwards a new arrangement was made. *M.* agreed to abandon Rs10,631 of the Rs33,631 due under the bond and to accept Rs23,000 payable in yearly instalments of Rs3,000 in satisfaction of her whole claim. In pursuance of this agreement, *D.* as executor paid the first instalment, *J.* paid the second instalment, *D.* having made over the estate of *H. K.* to the Administrator General under the provisions of Act II of 1874. *M.* died in October 1874, and the plaintiff as her executrix sued the defendant for the instalments due in 1876, 1877, and 1878. *Held* that the estate of *H. K.* having been released by *M.* by the deed executed on the 5th March 1873, it was not competent for *D.*, as executor, by a new contract to charge it with any liability in respect of the amount due to *M.* *Childs v. Monins, 1 B. & B., 460; Rose v. Bowles, 1 H. B.,*

EXECUTOR.—Power of executor—continued.

109; and *Powell v. Graham*, 7 Taunt., 591, followed. *CASSIBAI v. RANSORDAS HANRAJ* [I. L. R., 4 Bom., 5

15. ——— Sale of right, title, and interest of executor under will.—*Liability of, for costs.*—*Charge on estate of testator.*—*Gift to executors.*—*Trust.*—*Construction of will.*—*K.* died leaving a will which directed, among other dispositions of her property, that her executors should collect the rent of a house belonging to her, and after payment of revenue, taxes, and other expenses, should lay out every month Rs 30 for the worship of a thakoor, and should enjoy what remained in equal shares during their lives. One of the executors, *B.*, having been sued by one of the legatees because he had not paid one of the legacies under the will, a decree was made by consent, in execution of which the right, title, and interest of *B.* in the said house were sold by the Sheriff and purchased by *D.*, who was put in possession of the whole house. The other executor who proved the will subsequently to *B.*'s having done so then brought a suit against *D.*, praying that the will might be construed, the rights of the plaintiff and the defendant ascertained, and the portion she might be entitled to decreed. *Held* that the intention of the decree against *B.* was to make the costs payable, not by the estate of the testatrix, but by *B.* himself, and the execution sale was valid so far only as it conveyed such beneficial interest in the house as he took under the will. *Held*, also, that the property was not a mere gift to the executors subject to a charge, but a trust, and that *B.*'s interest was in the surplus rents and profits after satisfying the purposes of the will. *DEBNARAIN BOSH v. COMULMONER DOSSEN* 20 W. R., 39

16. ——— Executor de son tort, Liability of, in Hindu law.—*Assets of deceased's estate.*—*Onus probandi.*—*Award of interest as damages.*—In a suit upon a registered bond payable in eleven yearly instalments, to recover instalments 5-10 from the representatives of two deceased co-debtors, who, as managing members of an undivided Hindu family, had contracted the debt for family purposes, the plaintiff impleaded *G.*, the son-in-law of one of the deceased co-debtors, and his brothers, on the ground that they, in collusion with the widow of such deceased co-debtor, had, as volunteers, intermeddled with, and possessed themselves of, substantially, the whole property of the family of the deceased co-debtor. *Held* that *G.* and his brothers were properly joined as co-defendants and were liable for the debt of the deceased to the extent of the assets received by them. *Held*, also, that as the plaintiff had shown that some property of the deceased co-debtors had passed to *G.* and his brothers, the burden of proof lay on *G.* and his brothers to show that they had not received so much of the deceased debtor's property as would satisfy the debt. *Held*, also, that interest, in the nature of damages, from the date of suit, was properly awarded. *MAGALURI GURUDIAH v. NARAYANA RUNGIAH* [I. L. R., 3 Mad., 359

EXECUTORS AND TRUSTEES, CLAIMS TO MOVEABLE AND IMMOVEABLE PROPERTY AGAINST—

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R., 2 Calc., 45

See WILL—CONSTRUCTION.

[I. L. R., 2 Calc., 45

EXECUTORY TRUST.

See WILL—CONSTRUCTION.

[I. L. R., 4 Calc., 420

EX PARTE DECREE.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 108 (1859, s. 119).

See CASES UNDER EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—UNEXECUTED, BARRED, AND EX PARTE DECREES.

See CASES UNDER LIMITATION ACT, 1877, ART. 164 (1871, ART. 157).

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . . I. L. R., 3 Calc., 383

EXPENSES OF COLLECTION OF RENT.

See MISSE PROVIS—MODE OF ASSESSMENT AND CALCULATION.

[I. L. R., 1 All., 518

EXTORTION.

1. ——— Feigning attempt to commit offence.—*Penal Code, s. 387.*—The feigning of an attempt to commit suicide in order to extort money is an offence under section 387 of the Penal Code. *REG. v. GREGORY* . . . 1 Ind. Jur., N. S., 423

2. ——— Intentionally putting person in fear of injury.—To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury and thereby dishonestly inducing him to part with his property. *QUEEN v. MEJAN* 4 W. R., Cr., 5

3. ——— Putting person in fear of his life and taking property.—*Robbery.*—When a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion. *QUEEN v. DULMELOODDEEN SHRIKH* . . . 5 W. R., Cr., 19

4. ——— Requisites for offence.—*Penal Code, s. 384.*—*Abetment.*—*Held* that it is not necessary in a case of extortion, under the Penal Code, that the threat should be used and the property received by one and the same individual, nor that the receiver should be charged with abetment, although that might be done. *REG. v. SANWAR BHAGVAT* [2 Bom., 417 : 2nd Ed., 394

5. ——— *Penal Code, s. 383.*—*Belief of right to property.*—A conviction of extortion by a full-power Magistrate, and an order on a

EXTORTION.—Requisites for offence—continued.

Sessions Judge rejecting an appeal therein, reversed by the High Court under section 404 of the Criminal Procedure Code, as there was no such fear of injury as is contemplated by section 383 of the Penal Code, nor was the delivery of money by the complainants thereby induced, nor did it appear from the evidence that the money was obtained dishonestly, by the prisoner who might have demanded it, believing in good faith that he was entitled to it. *REG. v. ABDUL KADAR* [3 Bom. Cr., 45]

6. ——— Obtaining money by threatening not to conduct case.—The defendant was junior vakeel for the complainant (the defendant in a case before the Magistrate), and was instructed by his senior to apply for an adjournment, but the defendant obtained a bond from the complainant and conducted his defence. The defendant was convicted of extortion. *Held* that the conviction was bad. *ANONYMOUS* . . . 5 Mad., Ap., 14

7. ——— Terror of criminal charge.—*Fear of injury.—Penal Code, s. 383.*—The terror of a criminal charge is a fear of injury within the meaning of those words in section 383 of the Penal Code. Extortion may be equally committed whether the charge threatened is true or false. *QUEEN v. MOBARICK* . . . 7 W. R., Cr., 28

8. ——— Making use of influence, supposed or real, to obtain money.—The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of section 384 of the Penal Code. *IN THE MATTER OF ABBAS ALI* . 18 W. R., Cr., 17

EXTRADITION.

See WARRANT OF ARREST—CRIMINAL CASES . . . I. L. R., 1 Bom., 340

1. ——— Act VII of 1854 (Fugitive Foreign Offender), s. 23.—*Act XVII of 1862.—Warrant under the Extradition Act.*—Section 23 of Act VII of 1854 is not repealed by the schedule to Act XVII of 1862. The treaty of the 6th of November 1817 between His Highness the Gaikwad of Baroda and the East India Company provides for the delivery upon requisition of accused persons to His Highness the Gaikwad in a manner other than in accordance with the provisions of the sections of Act VII of 1854 prior to the 23rd section. The latter section is, therefore, applicable in such a case. *Semble*,—That Government would not be justified in delivering up an accused person to His Highness the Gaikwad without holding a preliminary enquiry into the guilt of such accused. Where a warrant issued under section 23 of Act VII of 1854 directed the accused person to be delivered up to the Resident at Baroda, without showing either that an enquiry had been made, or was about to be made, the Court held that it was not therefore invalid, as the presumption was that the accused was to be delivered up to the Resident in order that that officer might institute such an enquiry as is required by the Act. A warrant issued

EXTRADITION.—Act VII of 1854 (Fugitive Foreign Offender), s. 23—continued.

under section 23 of the Act should recite either that an enquiry has been held, or is about to be held, with reference to the guilt of the accused. *REG. v. SOUTHER. IN RE RAVJI BIN KESHAV* . 8 Bom., Cr., 18

EXTRADITION ACTS.

1. ——— Act XXI of 1879, s. 8.—*European British subjects in Native States.—Law applicable to British subjects in Native States.—Act III of 1884.—Act XXI of 1879, section 8* (which corresponds with section 8 of Act XI of 1872, now repealed), extends to all British subjects, European or Native, in Native States in alliance with Her Majesty the law relating to offences and criminal procedure for the time being in British India. The Code of Criminal Procedure (Act X of 1882), with the amendments introduced by Act III of 1884, is thus, by virtue of that section, applicable to such British subjects, Native or European. *QUEEN-EMPERESS v. EDWARDS* . . . I. L. R., 9 Bom., 333

2. ——— s. 9 (and Act XI of 1872).—*Jurisdiction of Criminal Court.—Offence in foreign territory.—Native Indian subject.*—A Native Indian subject of Her Majesty committed an offence (*viz.*, theft in a dwelling-house) in the territory of a Native State in alliance with Her Majesty, and was discovered in the territory of another Native State in alliance with Her Majesty, and from there brought down or came of his own accord to Ahmedabad. A certificate was granted by the Political Agent that the offence ought, in his opinion, to be enquired into in British India. At Ahmedabad a preliminary enquiry was held by a Magistrate, who committed the accused for trial by the Court of Session. *Held* that the Session Court at Ahmedabad was competent to try the offence committed in foreign territory as if it had been committed in the Ahmedabad District under section 9 of the Foreign Jurisdiction and Extradition Act, XXI of 1879, for when the accused was brought from foreign territory to Ahmedabad he was "found" at a place in British India within the meaning of the section. The expression "was found" used in this section must be taken to mean, not where a person is discovered, but where he is actually present. *EMPERESS v. MAGANLAL* [I. L. R., 6 Bom., 622]

F**FACTORS.**

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . . . 4 W. R., P. C., 1
[10 Moore's I. A., 239]

FACTORS' ACT (XX OF 1844).

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . 1 Ind. Jur., O. S., 17
[1 W. R., P. C., 43; 9 Moore's I. A., 140]

FACTUM VALET, DOCTRINE OF—

See CASES UNDER HINDU LAW—ADOPTION—FACTUM VALET, DOCTRINE OF—

FACTUM VALET, DOCTRINE OF—*continued.*

See HINDU LAW—FAMILY DWELLING-HOUSE . . . 4 B. L. R., O. C., 72

FALSE CHARGE—Giving evidence in support of—

See AVERMENT . . . 9 B. L. R., Ap., 16
[10 C. L. R., 4

1. ————— **Penal Code, s. 211.—Knowledge by accused of offences.**—To establish a charge under section 211 of the Penal Code, it is necessary to show that the accused knew or had reason to believe that an offence had been committed. *QUEEN v. BHITTO KAHAR* . . . 1 Ind. Jur., O. S., 123

2. ————— **Knowledge that charge is false.**—A person may in good faith institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them, but in neither case has he committed an offence under section 211 of the Penal Code. To constitute this offence it must be shown that the person instituting criminal proceedings knew there was no just or lawful ground for such proceedings. The averment that the accused knew that there was no lawful ground for the charge instituted is a most material one. *QUEEN v. CHUDDA* . . . 3 N. W., 327

3. ————— **False charge by police officer.**—Section 211 of the Penal Code applies not only to a private individual, but also to a police officer who brings a false charge of an offence with intent to injure. *IN THE MATTER OF THE PETITION OF NABODEER CHUNDER SIKAR* . . . 11 W. R., Cr., 2

4. ————— **False charge in petition of complaint.**—If the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in section 211 of the Penal Code. *QUEEN v. MATA DYAL* . . . 4 N. W., 6

5. ————— **False charge.—False information.**—*Penal Code, s. 182.*—Where a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under section 211 of the Penal Code, and not under section 182. *EMPERESS v. ANJUN* . . . 1 L. R., 7 Bom., 184

6. ————— **Compounding of fines.**—*Discharge of accused, charged under s. 211, upon plea of original charge having been compounded.*—The fact that an offence alleged to have been committed has been compounded is no conclusive answer to a charge made against the prosecutor under section 211 of the Penal Code. A. laid a charge against M. for wrongful confinement. The Police reported the case as a false one, and A. not appearing to prove his complaint, the District Magistrate ordered him to be prosecuted under section 211 of the Penal Code, and made over the case to a Deputy

FALSE CHARGE.—Penal Code, s. 211—*continued.*

Magistrate. Upon the hearing of such charge, A. pleaded that he had compounded the original charge laid by him against M., and that therefore the charge against him under section 211 could not lie. The Deputy Magistrate without hearing any evidence dismissed the case. *Held* that the course so taken was illegal, as such plea was no conclusive answer to a charge under section 211. *QUEEN-EMPERESS v. ATAB ALI* [1 L. R., 11 Cal., 79

7. ————— **Specific false charge.**—Where a specific false charge is made, the proper section for proceedings to be adopted under is section 211 of the Penal Code. *QUEEN-EMPERESS v. JUGAL KISHORE* . . . 1 L. R., 8 All., 352

8. ————— **Requisites for offence.—Making false charge.**—To constitute the offence of making a false charge, under section 211 of the Penal Code, it is enough that the false charge is made though no prosecution is instituted thereon, provided that the charge is not pending at the time of the offender's trial. *Queen v. Subbanna Gaundan, 1 Mad., 30*, followed. *Queen v. Bishoo Barik, 16 W. R., Cr., 77*, distinguished. *EMPERESS v. ABUL HASAN* [1 L. R., 1 All., 497

EMPERESS v. SALIK . . . 1 L. R., 1 All., 327

9. ————— **Requisites to sustain offence.**—To constitute the offence of preferring a false charge under section 211 of the Penal Code, the charge need not be made before a Magistrate. Nor need the charge have been fully heard and dismissed; it is enough if it is not pending at the time of trial. *QUEEN v. SUBBANNA GAUNDAN* . . . 1 Mad., 30

S. C. QUEEN v. TEORANA GAUNDAN [1 Ind. Jur., G. S., 120

10. ————— **Making false charge to Court or officer having no jurisdiction.**—It is necessary for a conviction under section 211 of the Penal Code that the false charge should have been made to a Court or officer having jurisdiction to investigate and send it up for trial. *IN THE MATTER OF THE PETITION OF JAMUNA. EMPERESS v. JAMUNA* . . . 1 L. R., 6 Cal., 620; 8 C. L. R., 215

11. ————— **Charge laid before police officer.**—There is nothing in section 211 of the Penal Code which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice. A false charge made before the police is therefore punishable under this section. *ASHROF ALI v. EMPERESS* . . . 1 L. R., 5 Cal., 261

12. ————— **Complaint to police.**—To prefer a complaint to the police, in respect of an offence which they are competent to deal with, and thereby to set the police in motion, is to institute a criminal proceeding within the meaning of section 211 of the Penal Code. *QUEEN v. BOWEN-MALEY SOHAI* . . . 5 W. R., Cr., 32

13. ————— **Charge made to police.—Penal Code, s. 182.**—Sections 182 and 211

FALSE CHARGE.—Penal Code, s. 211—continued.

of the Penal Code distinguished. The latter held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the now complainant with having caused the death of the accused's child by poisoning. **RAZFEE MAHOMED v. ABBAS KHAN**. 8 W. R., Cr., 67

14. Charge made to police.—Where a person who is interested in the matter or has a certain official responsibility, says to a police officer:—"A. tells me that X. has committed a certain offence and B. and C. confirm the statement, and I accordingly suspect X.," and follows up that statement by an application to have X.'s house searched, he prefers a charge against X., and if such charge be false, he may be convicted under section 211, Penal Code. **QUEEN v. HUMOONAN LALL**

[19 W. R., Cr., 5]

15. Statement made to police as to suspicion of offence.—*Institution of criminal proceedings.*—A statement made to the police of a suspicion that a particular person had committed an offence is not a "charge" within the meaning of section 211 of the Penal Code, nor does it amount to the institution of a criminal proceeding, and the person making the statement cannot, on the suspicion being proved to be unfounded, be convicted under that section. **IN THE MATTER OF BRAMANUND BHUTTACHARJEN**. 8 C. L. R., 233

16. Charge on insufficient evidence.—It is not a sufficient ground for a charge under section 211 of the Penal Code, that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence or a statement which is not or ought not to be sufficient to satisfy a reasonable mind, if in truth he did not know at the time he made the complaint that there was no just and lawful ground for making it. **QUEEN v. PRAN KISSAN BID**. 6 W. R., Cr., 15

17. False charge of burning house.—Where a man burns his own house and charges another with the offence of doing so, he should be convicted and sentenced under section 211 (and not under section 195) of the Penal Code. **QUEEN v. BHUGWAN AHIR**. 8 W. R., Cr., 66

18. Charge of refusal to give stamped receipt.—The refusal to give a stamped receipt for money paid not being in itself an offence at law, to make a false charge against a party of refusing to give such a stamped receipt is not an indictable offence. **REG. v. GAFAN KUM KUSAJI**

[1 Bom., 92]

19. Instituting criminal proceeding.—Under section 211, Penal Code, "instituting a criminal proceeding" may be treated as an offence in itself apart from "falsely charging" a person with having committed an offence. Where a person is charged with instituting a criminal proceeding, with intent to cause injury, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him; not for the prisoner in the first instance

FALSE CHARGE.—Penal Code, s. 211—continued.

to show that he had just or lawful grounds. **QUEEN v. NOBOKISTO GHOSH**. 8 W. R., Cr., 87

20. Institution of criminal proceedings.—The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of section 211 of the Penal Code, and if a person only makes a false charge his case falls under the first part of the section irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards." **EMPRESS v. PITAM RAI**. 1 I. L. R., 5 All., 215

21. Institution of criminal proceedings.—Where no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of section 211 of the Penal Code, the person making such charge is punishable only under the first part of that section. **EMPRESS v. PARAHU**. 1 I. L. R., 5 All., 598

22. Prosecution under s. 182.—Rejection of complaint with reference to police report.—K. made a report at a police station accusing R. of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that in their opinion the offence was not established, the Magistrate ordered the case to be "shelved." K. then preferred a complaint to the Magistrate again accusing R. of the offence. The Magistrate rejected the complaint with reference to the police report. Subsequently R., with the sanction of the police authorities, instituted criminal proceedings against K., under section 182 of the Penal Code, in respect of the report which he had made at the police station, and K. was convicted under that section. Held that, before proceeding against K., the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law, because the police had reported against the entertainment of the case. The views expressed in *Government v. Karimdad*, 1 I. L. R., 6 Cal., 496, concurred in. **EMPRESS v. RADHA KISHAN**

[1 I. L. R., 5 All., 36]

23. Charge made on report of police that case was false.—Charge of giving false information.—A commitment for trial under the provisions of section 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons accused, is not illegal merely because the complaint which the accused made has not been judicially enquired into, but is based on the report of the police that the case was a false one. **EMPRESS v. SALIK ROY**. 1 I. L. R., 6 Cal., 582

[8 C. L. R., 255]

24. Enquiry into truth of charge.—*Criminal Procedure Code, 1872, s. 471.*—A petition was presented to the Joint Magistrate charging the police with having made a false report of an investigation which they had been directed to make at the instance of the petitioner. The Joint Magistrate, after reading the police report, re-

FALSE CHARGE—Penal Code, s. 211—continued.

jected the petition, and directed the petitioner to be prosecuted under section 211 of the Penal Code for having made a false charge. *Held* that the Joint Magistrate should not have made the order without first instituting an enquiry into the truth of the complaint, such as is required by section 471 of the Code of Criminal Procedure. *Queen v. Gour Mohun Sing*, 16 W. R., 44; and in the matter of *Nissar Hossein*, 25 W. R., 10, considered. **IN THE MATTER OF CHOOLHAIR TELES** . . . 2 C. L. R., 315

25. ——— Dismissal of complaint.—Criminal Procedure Code (Act X of 1872), ss. 470 and 471.—Where a charge had been preferred against a person, and the Magistrate before whom it was heard, after hearing the statement of the complainant, but not those of the witnesses, dismissed the complaint; and subsequently, on the application of the person charged, granted him leave under section 470 to prosecute the complainant for bringing a false charge.—*Held* that the proceedings were not irregular, and that the Magistrate was justified in acting as he had done. *Held*, also, that there is a distinction in the proceedings to be adopted when a sanction is given under section 470, and the institution by the Court of its own motion of proceedings under section 471. *Nissar Hossein v. Ramgolam Singh*, 25 W. R., Cr., 10, dissented from. **IN THE MATTER OF GYAN CHUNDER ROY v. PRATAP CHUNDER DASS**

[I. L. R., 7 Calo., 208
8 C. L. R., 267

26. ——— Allowing opportunity to show grounds for charge.—Where a person is charged under section 211 of the Penal Code with having, with intent to injure, falsely charged another with an offence knowing that there is no just and lawful ground for the same, the party accused should be allowed to show the information on which he acted, and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him. *Rag. v. Nevalmal Valad Umredmal* . . . 3 Bom., Cr., 16

27. ——— False charge.—Act X of 1872 (Criminal Procedure Code), ss. 146, 147.—Where a Magistrate dismisses a complaint as a false one under section 147 of the Criminal Procedure Code, and decides to proceed against the complainant under section 471 for making a false charge, he is not bound before so proceeding to give the complainant an opportunity of substantiating the truth of the complaint, by being allowed to produce evidence before him. *Empress v. Bhawani Prasad*

[I. L. R., 4 All., 182

28. ——— Prosecution for making a false charge.—Opportunity to accused to prove the truth of charge.—Before a person can be put upon his trial for making a false charge under section 211 of the Penal Code, he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it,

FALSE CHARGE—Penal Code, s. 211—continued.

not before the police, but before the Magistrate. *GOVERNMENT v. KARIMDAD*

[I. L. R., 6 Calo., 496
7 C. L. R., 467

29. ——— Sanction to prosecution for making false charge.—A sanction for a prosecution for making a false charge under section 211 of the Penal Code, without hearing all the witnesses whom the person accused of making the false charge wishes to produce, is illegal. The High Court has power to quash an illegal commitment at any stage of the case. *Empress v. Shibo Behara*

[I. L. R., 6 Calo., 584
8 C. L. R., 265

30. ——— Opportunity of substantiating charge.—Upon a trial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra Assistant Commissioner, and a local enquiry by a competent police officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted. The Extra Assistant Commissioner ordered the papers to be sent to the Deputy Commissioner who ordered the prosecution, and the prisoner was convicted. *Held* that the conviction was bad. The Extra Assistant Commissioner should, on receipt of the report of the police, have communicated its contents to the prisoner and afforded her an opportunity of substantiating her complaint, and should then have decided the case. **IN THE MATTER OF THE PETITION OF SOKHINA BIBI. EMPRESS v. GURISH CHUNDER NUNDI**

[I. L. R., 7 Calo., 87
8 C. L. R., 387

31. ——— Opportunity of substantiating charge.—A Magistrate should not direct a prosecutor to be put upon his trial under section 211 of the Penal Code without first giving him an opportunity of obtaining a judicial enquiry into the charge originally preferred by him. **IN THE MATTER OF THE PETITION OF GIRIDHARI MUNDUL. GIRIDHARI MUNDUL v. UCHIT JHA**

[I. L. R., 8 Calo., 435
10 C. L. R., 46

NISSAR HOSSEIN v. RAMGOLAM SINGH

[25 W. R., Cr., 10

See QUEEN v. GOUB MOHUN SINGH

[16 W. R., Cr., 44

32. ——— Enquiry into truth of charge.—Where a charge of theft was reported by the police to be false,—*Held* that the Magistrate ought first to have enquired into the charge of theft and passed some orders upon it before proceeding under section 211 of the Penal Code to enquire into the offence of false charge. **IN THE MATTER OF BISHOO BARIK** . . . 16 W. R., Cr., 77

33. ——— Enquiry into truth of charge.—Penal Code, s. 182.—*J.* complained to the police that she had been raped by *Z.* The police having reported the charge to be false, criminal proceedings were instituted against her under section

FALSE CHARGE.—Penal Code, s. 211—continued.

182 of the Penal Code. In the meantime *J.* made a complaint in Court, again charging *R.* with rape. This complaint was not disposed of, but the proceedings against her under section 182 of the Penal Code were continued, and she was eventually convicted under that section. *Held*, setting aside the conviction and directing that *J.*'s complaint should be disposed of, that such complaint should have been disposed of under section 211 before proceedings were taken against her under section 182. *EMPERESS v. JAMNI* . . . I. L. R., 5 All, 367

34. ————— *Preliminary enquiry.—Criminal Procedure Code, 1872, s. 471.—Penal Code, s. 182.*—An offence under section 211 of the Penal Code includes an offence under section 182; it is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under section 211. *BROOKTHAM v. HENNA KOHRA* . . . I. L. R., 5 Calo., 124

35. ————— *False information to police.—Penal Code, s. 182.—Charge found false by police.*—Where a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified merely on a perusal of a police report, which has found the charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under section 182 of the Penal Code, but should proceed under section 211. When a charge is pronounced false by the police, no proceedings should be taken by a Magistrate *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation. *IN THE MATTER OF RUSICK LALL MULLICK* . . . 7 C. L. R., 362

IN THE MATTER OF RIYOGI BHAGUT

[4 C. L. R., 134]

36. ————— *Dismissal of complaints without giving complainant opportunity to prove it true.*—A charge laid against certain persons before the police having been reported false by that body the person who made the charge complained to the Magistrate of the District, who directed a fresh investigation. The charge was again reported false. The complainant thereupon filed a petition in which he alleged that the second investigation had not been properly conducted, and asked that further evidence might be taken by a specified officer. No further investigation having taken place, the complainant was ordered to be prosecuted under section 211 of the Penal Code, and on trial was convicted and sentenced. On appeal to the High Court, it was held that the conviction was illegal, inasmuch as an opportunity had not been afforded to the accused of producing all his evidence in support of the charge made by him. *In the matter of Rusick Lall Mullick*, 7 C. L. R., 362; and in the matter of *Riyogi Bhagut*, 4 C. L. R., 134, followed. *Per MACLEMAN, J.*—The proper principle which should guide a Magistrate is, that if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police enquiry, he would be justi-

FALSE CHARGE.—Penal Code, s. 211—continued.

fied in proceeding against a person who has made a complaint to the police which has been found to be false; but if a complaint is made, that complaint must be dealt with judicially. It is unfair even then to proceed against the complainant without hearing any witnesses whom he may wish to examine. *Per MITTER, J.*—Although a Magistrate has power under section 147 of the Criminal Procedure Code to dismiss a complaint without examining witnesses, yet in such a case no sanction for prosecution under section 211 of the Penal Code should be granted. *See in the matter of Gyan Chander Roy*, 8 C. L. R., 267. *IN THE MATTER OF CHUKRADAR PORTI* . . . 8 C. L. R., 269

37. ————— *Conviction by Sessions Court.—Opportunity not given to accused to prove charge before Magistrate.*—*R.* made a complaint of theft against *S.* to the police. The police referred the case as false to the Magistrate. The Magistrate summoned *R.* and examined him, but gave him no opportunity to prove the charge by calling the witnesses named by him. The Magistrate then ordered the case to be struck off the file and gave sanction to prosecute *R.* *R.* was subsequently brought before the same Magistrate and committed to the Sessions, and convicted by the Sessions Court under section 211 of the Penal Code. *Held* that although *R.* had no opportunity of proving this case before he was himself tried, the conviction was not illegal. *Government v. Karimdad*, I. L. R., 6 Calo., 496, distinguished. *RAMASAMI v. QUEEN-EMPERESS* [I. L. R., 7 Mad., 292]

38. ————— *Prosecution for making a false charge.—Opportunity to accused to prove the truth of charge.—Criminal Procedure Code, s. 195.*—A complaint of offences under sections 328 and 379 of the Penal Code was referred to the police for enquiry. The police reported that the charge was a false one, and thereupon the Magistrate of the district passed an order under section 195 of the Criminal Procedure Code, directing the prosecution of the complainants for making a false charge under section 211 of the Penal Code. *Held* that the order under section 195 of the Criminal Procedure Code should not have been passed until the complainants had been afforded an opportunity of proving their case, which had been thrown out merely on the report of the police. *Government v. Karimdad*, I. L. R., 6 Calo., 496, referred to. *QUEEN-EMPERESS v. GANGA RAM* . . . I. L. R., 8 All, 39

39. ————— *Procedure before framing charge.*—Procedure before framing a charge under section 211 of the Penal Code, of the offence of making a false charge with intent to injure, considered. *IN THE MATTER OF THE PETITION OF GAUR MOHUN SING* . . . 8 B. L. R., Ap., 11

S. C. QUEEN v. GAUR MOHUN SING

[16 W. R., Cr., 44]

40. ————— *False charge, Conviction on.—Entry of, in Calendar.*—When a prisoner is convicted of having made a false charge of

FALSE CHARGE.—Penal Code, s. 211—continued.

an offence, the nature of the false charge should be stated in the finding and entered in the Calendar.
REG. v. ARJUN 1 Bom, 87

41. ——— Information given to police.—*Record.*—Where the charge is one of instituting a false charge of an offence with intent to injure, the actual information which the prisoner made at the thannah ought to be given in evidence and form part of the record. *QUEEN v. HOOLAS*
 [23 W. R., Cr., 32]

FALSE DEED SET UP TO SUPPORT RIGHTFUL CLAIM.

See TITLE—MISCELLANEOUS CASES.
 [7 B. L. R., 136]

FALSE EVIDENCE.	Col.
1. GENERALLY	1961
2. FABRICATING FALSE EVIDENCE	1971
3. CONTRADICTORY STATEMENTS	1975
4. PROOF OF CHARGE	1980
5. TRIAL OF CHARGE	1980

See CASES UNDER CHARGE—FORM OF CHARGE—FALSE EVIDENCE.

See CRIMINAL PROCEDURE CODE, 1862, s. 487, PARA. 1 (1872, s. 478).

[I. L. R., 1 Bom., 311
 I. L. R., 1 All., 625
 10 Bom., 73
 18 W. R., Cr., 15
 22 W. R., Cr., 49]

See CASES UNDER FORGERY.
 [I. L. R., 6 Cal., 482
 7 C. L. R., 366]

1. GENERALLY.

1. ——— Requisites for legal conviction of false evidence.—*Attestation of record by Magistrate.*—Before criminating a man upon his own statement under examination, it is necessary to see that such statement has been deliberately made and recorded; that after being recorded it has been shown or read to the accused; and that the examination has been attested by the signature of the Magistrate, following a certificate to be given under his own hand. *QUEEN v. NEBUNI* . 7 W. R., Cr., 49

See *QUEEN v. MUNGUL DASS*
 [23 W. R., Cr., 28]

2. ——— Requisites for conviction of giving false evidence.—The true rule in a case of giving false evidence is that no man can be convicted of such offence except on proof of facts which, if accepted as true, show not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. *QUEEN v. AHMED ALY* . 11 W. R., Cr., 25

3. ——— False statement under affirmation criminating witness himself.—Where a party makes a false statement when legally bound

FALSE EVIDENCE—continued.**1. GENERALLY—continued.****False statement under affirmation criminating witness himself—continued.**

by a solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence.
ANONYMOUS 3 Mad., Ap., 29

4. ——— False statement of witness criminating himself.—*Penal Code, s. 191.*—Although a person under examination as a witness is bound by his affirmation to tell the truth, if he is examined on a point on which he is likely to criminate himself, his position should be explained to him by the Magistrate, as otherwise he may be induced, through ignorance of the state of the law, to deny the existence of facts for fear of penal consequences. Although without such a warning he may make a false denial and thereby become guilty of the offence of intentionally giving false evidence, his offence will not be deserving of severe punishment. *JADDOO NATH DUTT v. EMPRESS* . 2 C. L. R., 181

5. ——— Evidence of corrupt intention.—*Statement known by accused to be false.*—Upon a prosecution for giving false evidence, the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention, and if the statement was false, and known by the accused to be false, it may be presumed that, in making it, the accused intentionally gave false evidence. *QUEEN v. AMER ALI KHAN* 3 N. W., 133

6. ——— Proof that accused knew statement to be false.—*Penal Code, s. 193.*—To support a charge of giving false evidence under section 193, it must be shown that the accused intentionally made a particular statement false to his own knowledge. *QUEEN v. MAHARAJ MISSEH*
 [7 B. L. R., Ap., 66; 16 W. R., Cr., 47]

7. ——— Proof of deposition alleged to be false.—In a case of false evidence it is necessary to prove the deposition alleged to contain the false statement. *QUEEN v. BHAKOAS TUTUM*
 [7 W. R., Cr., 18]

8. ——— Proper Court to direct prosecution for giving false evidence.—*Criminal Procedure Code, 1861, s. 169.—Specific charge.*—There is nothing in section 169 of the Code of Criminal Procedure which gives a Judge, not sitting in appeal, any original jurisdiction to entertain a charge of giving false evidence before another Court. No other Court than that before which false evidence is given can direct a prosecution in respect thereof. In a prosecution for false evidence, there must be some specific charge of making some particular and specific false statement, and some direct evidence that such specific statement was false. *ASMEEDH KOONWAR v. TAYLER. KHORSHED ALI v. TAYLER*
 [W. R., 1864, 15]

9. ——— Affirmation for cases during one day, not for each case as called on.—*Penal Code, s. 193.*—Where a witness was, at the beginning of the day, solemnly affirmed once for all

FALSE EVIDENCE—continued.**1. GENERALLY—continued.**

Affirmation for cases during one day, not for each case as called on—continued.

to speak the truth in all the cases coming before the Court that day.—*Held* that he might be convicted, under section 193 of the Penal Code, of giving false evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered. **QUEEN v. VEN-KATACHALAM PILLAI** . . . 2 Mad., 43

10. ——— Evidence not given on oath.—Hindu convert.—False statement.—Penal Code, ss. 191, 193, 199.—A Hindu who has become a convert to Christianity is not under a legal obligation to speak the truth unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under section 193 of the Penal Code. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of section 199 of the Penal Code, nor is the witness bound to make a declaration under section 191. **QUEEN v. VEDAMUTTU** [4 Mad., 185

11. ——— Materiality of statement.—Penal Code, ss. 191, 193.—The materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding, and an indictment under sections 191, 193, of the Penal Code, though it does not allege materiality, is good if it alleges sufficiently the substance of the offence. **QUEEN v. ALDRUS SAHIB** [1 Mad., 38

12. ——— Penal Code, ss. 191 and 192.—To constitute the offence of giving false evidence under section 191 of the Penal Code, it is not necessary that the false evidence given should be material to the case in which it is given. *Aliter* under section 192. **REG. v. DAMODHAR RAM-CHANDRA** . . . 5 Bom., Cr., 68

13. ——— Penal Code, s. 191.—Intention.—The words of section 191 of the Penal Code are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false evidence is intentionally given,—that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court, and of leading it to be supposed that that which he states is true. **QUEEN v. MAHOMED HOSSEINI** . . . 16 W. R., Cr., 37

14. ——— Untrue statement immaterial to case before Court.—A statement untrue to the prisoner's knowledge made upon oath in the course of a judicial proceeding amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court. **QUEEN v. SHIB PRASAD GIRI** . . . 19 W. R., Cr., 69

FALSE EVIDENCE—continued.**1. GENERALLY—continued.**

15. ——— Judicial proceeding, Statement made in.—Penal Code, s. 193.—Form of charge.—It is essential, in order to sustain a charge under section 193 of the Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was made. **QUEEN v. FATIK BISWAS** . . . 1 B. L. R., A. Cr., 18

S. C. QUEEN v. FUTTEAH BISWAS [10 W. R., Cr., 37

16. ——— Preliminary enquiry, Statement made in.—Penal Code, ss. 193 and 467.—Criminal Procedure Code (Act X of 1882), s. 337.—Evidence of accused illegally pardoned.—In cases not of the kind contemplated in section 337 of the Criminal Procedure Code (X of 1882), it is not competent to a Magistrate holding a preliminary enquiry to tender a pardon to the accused, or to examine him as a witness. Statements made by the accused in the course of such examination are irrelevant; and if subsequently retracted, they cannot be used against him, or subject him to a prosecution for giving false evidence, under section 193 of the Penal Code. **REG. v. HAMMANTA, I. L. R., 1 Bom., 610**, followed. **QUEEN-EMPRESS v. DALA JIVA** . I. L. R., 10 Bom., 190

17. ——— Enquiry by Magistrate.—Penal Code, s. 193.—Judicial enquiry.—An enquiry by an Assistant Magistrate, with a view to tracing the writer of an anonymous letter addressed to him charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of false evidence is punishable under section 193 of the Penal Code. **QUEEN v. BYKANT NATH BANERJEE** . . . 5 W. R., Cr., 72

18. ——— Examination of complainant.—Statement in petition of complainant.—Judicial proceeding.—Investigation.—Penal Code, s. 193.—The examination of a complainant in reference to the matter of his petition of complaint is an investigation directed by law, and therefore a stage of a judicial proceeding. Consequently, if in the course of that examination false evidence is intentionally given by the complainant, he is legally chargeable with the offence described in section 193 of the Penal Code. **QUEEN v. MATA DYAL** . . . 4 N. W., 6

19. ——— Examination on oath without jurisdiction.—Criminal Procedure Code, 1861, ss. 168, 169.—Judicial proceeding.—When a plaintiff before a Munsif came and petitioned the Judge, complaining that the Munsif had improperly refused to examine his witnesses and had dismissed his suit, although informed that witnesses were in attendance, and the Judge, upon examining the petitioner upon solemn affirmation and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving false evidence,—*Held* that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made, and the evidence given *coram non jure*, could not

FALSE EVIDENCE—continued.**1. GENERALLY—continued.****Examination on oath without jurisdiction—continued.**

form the subject of a prosecution for false evidence.
QUEEN v. JADUB CHUNDER BISWAS

[W. R., 1884, Cr., 15]

20. ——— Annulment of proceedings in trial at which false evidence was given.—Judicial proceeding.—The accused was convicted of intentionally giving false evidence in a judicial proceeding, in having, as a witness therein, made on solemn affirmation a false statement. The proceedings in the trial at which the alleged false evidence was given were subsequently annulled, in consequence of the sanction for the prosecution being insufficient. *Held* that the conviction of the accused must be reversed, as the false statement was not made in a stage of a judicial proceeding. **REG. v. RAVJI VALAD TAGU**

[8 Bom., Cr., 37]

21. ——— Proceeding in which Judge had no authority to administer oath.—Penal Code, ss. 191, 193.—Criminal Procedure Code, s. 477.—False evidence.—“Judicial proceeding.”—A man died leaving some money due to him in the hands of the Telegraph authorities. P. wrote a letter to those authorities claiming the money as the sole heir of the deceased. This letter was sent to the District Judge for verification and orders. P. supported his claim before the Judge by the evidence on oath of C. C.’s evidence being, in the opinion of the District Judge, false, the District Judge, in his capacity as Sessions Judge, tried him for giving false evidence, and convicted him of that offence. *Held* that, as the reference to the District Judge by the Telegraph authorities of P.’s letter for verification, and the subsequent action in regard thereto, did not constitute a “judicial proceeding,” and as the District Judge had not any authority to administer an oath to C., the conviction was illegal. **EMPRESS v. CHAIT RAM**

[I. L. R., 6 All., 108]

22. ——— Enquiry under Legal Practitioners’ Act.—Penal Code, ss. 181, 193.—Legal Practitioners’ Act, XVIII of 1879.—Judicial proceeding.—Examination of accused on solemn affirmation.—Where three persons, of whom one was a pleader, were tried together and convicted under section 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an enquiry into the conduct of the pleader under the provisions of the Legal Practitioners’ Act,—*Held* that the conviction of the pleader was bad, as his statement was improperly taken from him on solemn affirmation. *Held*, further, that an enquiry under the Legal Practitioners’ Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under section 193 of the Penal Code. **KOTHA SUBBA CHETTI v. QUEEN**

[I. L. R., 6 Mad., 252]

23. ——— Penal Code, ss. 191 and 193.—Giving false evidence before a police patrol.—Bombay Act VIII of 1867 (Village Police), s. 18.—A

FALSE EVIDENCE—continued.**1. GENERALLY—continued.****Penal Code, ss. 191 and 193—continued.**

person who makes a false statement upon oath before a police patrol, acting under section 18 of Bombay Act VIII of 1867, gives false evidence within the meaning of section 191 of the Penal Code, and is punishable under section 193. **EMPRESS v. IREBASAPA**

[I. L. R., 4 Bom., 479]

24. ——— Evidence not given in Court of Justice.—Penal Code, ss. 191, 194.—Statement made to police officer.—It is not necessary, under section 194, Penal Code, that the false evidence which is given should be evidence given in a Court of Justice. Such statement, if made to a police officer, would amount to the offence of giving false evidence as defined in section 191, taking section 118 of the Code into consideration. **QUEEN v. NIM CHAND MOOKERJEE**

[20 W. R., Cr., 41]

IN THE MATTER OF JUGGERNATH SAHAI

[8 C. L. R., 236]

25. ——— Police investigation.—Penal Code, s. 191.—Criminal Procedure Code, 1872, ss. 118, 119.—Neither the words “shall answer all questions” in section 118 of the Code of Criminal Procedure, nor the words “shall be bound to answer all questions” in section 119 of the same Code, constitute “an express provision of the law to state the truth” within the meaning of section 191 of the Penal Code. Sections 118 and 119 are merely intended to oblige persons to give such information as they can to the police, in answer to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth. **EMPRESS v. KASSIM KHAN. EMPRESS v. DAHIA**

[I. L. R., 7 Calc., 121; 8 C. L. R., 300]

26. ——— Judicial proceeding.—Code of Criminal Procedure, Act X of 1882, ss. 155 and 161.—Penal Code, XLV of 1860, s. 193.—Section 161 of the Code of Criminal Procedure, Act X of 1882, makes it obligatory on a person examined in the course of a police investigation under chapter XIV to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture), and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of a judicial proceeding under section 193 of the Penal Code. **QUEEN-EMPRESS v. PARSHRAM RAYSING**

[I. L. R., 8 Bom., 216]

27. ——— Criminal Procedure Code, 1882, s. 161.—Penal Code, s. 193.—False statement to police officer.—The law laid down by the Full Bench in the case of *Empress v. Kassim Khan*, I. L. R., 7 Calc., 121, has been altered by the provisions of section 161 of the Code of Criminal Procedure (Act X of 1882), and a witness who makes a false statement to a police officer in reply to a question which he is bound to answer, would be guilty of intentionally giving false evidence. **NATHU SHEIK v. QUEEN-EMPRESS**

[I. L. R., 10 Calc., 405]

FALSE EVIDENCE—continued.**1. GENERALLY—continued.**

28. — Statement made in judicial proceeding before Magistrate.—*Penal Code, ss. 181, 193.*—Where a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under section 181 of the Penal Code, but should commit to the sessions under section 193 of that Code. *QUEEN v. NUSSUROOD-DEEN SHAZWAL* . . . 11 W. R., Cr., 24

29. — Statement made in proceedings without jurisdiction.—*Penal Code, ss. 181, 193.*—A conviction under section 181 of the Penal Code is good, though the offence falls within section 193. *ANONYMOUS* . . . 4 Mad., Ap., 18

30. — False statement before Income Tax Commissioner.—*Penal Code, ss. 181, 193.*—When an offence under section 193 of the Penal Code is established, a conviction under section 181 is illegal. When the accused made on solemn affirmation a statement before an Income Tax Commissioner, which statement the accused knew, or had reason to believe, to be incorrect, it was held that such statement amounted to the offence of giving false evidence in a judicial proceeding under section 193 of the Penal Code, and was, therefore, not cognisable by a full-power Magistrate, as it could not be treated as constituting an offence triable under section 181 of the Penal Code (making a false statement to a public servant). *Rsg. v. DAYALJI ENDARJI* . . . 8 Bom., Cr., 21

31. — False statement in verified petition under s. 19 of Act IX of 1869 (Income Tax Act).—The prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under section 19 of the Income Tax Act (Act IX of 1869) to a tahsildar. *Held* that the tahsildar was not an officer competent to receive such a petition, and that no offence was committed. *MOONRAFFA OODIAN v. QUEEN. SUBRAYA OODIAN v. QUEEN* . . . 5 Mad., 326

32. — Making false return of service of summons.—*Penal Code, s. 193.*—The making of a false return of service of summons is an offence punishable, not under section 181, but under section 193 of the Penal Code, and is cognisable by the Court of Session alone. *QUEEN v. SHAMA CHURN ROY* . . . 8 W. R., Cr., 27

33. — Statement before Collector as Revenue Officer.—*Penal Code, s. 193.—Judicial enquiry.*—A conviction may be had for giving false evidence under section 193, Penal Code, even if the evidence be given in matters not judicial (such as before the Collector acting in his fiscal capacity under Regulation XIX of 1814), but it must be proved that the false statement was made under the sanction of the law. *QUEEN v. AUDHUN ROY*

[14 W. R., Cr., 24

34. — Enquiry into application for allowance for spoiled stamps.—*Enquiry made by Deputy Collector.—Stamp Act, 1879, s. 51.—Pe-*

FALSE EVIDENCE—continued.**1. GENERALLY—continued.****Enquiry into application for allowance for applied stamps—continued.**

Penal Code, ss. 181, 193.—The Collector himself is the officer, and no other, to whom power is given by law to make enquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. *Held*, therefore, where a person had applied for a refund under chapter VI of Act I of 1879, and the Collector made over the application for enquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under section 181 or section 193 of the Penal Code was sustainable. *EXPRESS OF INDIA v. NIAZ ALI*
[I. L. R., 5 All., 17

35. — False statement made before Registrar.—*Proceedings under the Registration Act, 1866.*—A Sub-Registrar is competent, for any purpose contemplated by Act XX of 1866, to examine any person; and any statement made by such person before an officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution. *QUEEN v. JUGGUT CHUNDER DUTT* . . . 6 W. R., Cr., 81

36. — Petitions not verified.—*Prosecution under the Registration Act (III of 1877), s. 82, cl. (a) and s. 83, ss. 73 and 78.*—Where the accused was tried for intentionally making a false statement in the course of certain proceedings taken before a Registrar, *Held* that even assuming that such proceedings were taken under section 72 of the Registration Act, and not, as they should have been, under section 78, the appearance of the accused before the Registrar and his taking no objection to the form of the proceedings will cure the irregularity for the purposes of a criminal trial under the provisions of the Registration Act. Nor under similar circumstances will the want of verification of a petition of appeal on the part of the applicant, as provided by section 73 of the Act, oust the jurisdiction of the Criminal Court. *Reg. v. Berry*, 28 L. J., M. C., 86; *Queen v. Fletcher*, L. R., 1 C. C. R., 320; *Turner v. Post Master General*, 5 B. & S., 766; *Queen v. Hughes*, L. R., 4 Q. B. D., 614; *Queen v. Smith*, L. R., 1 C. C. R., 110, followed. *Held* also that, except as directed by section 82 of Act III of 1877, the Magistrate has no authority on his own mere motion to frame a charge against the accused in consequence of evidence given in the course of the trial by the registering officer, in respect of certain statements made before him during registration proceedings. *QUEEN-EMPRESS v. BATESAR MANDAL* . . . I. L. R., 10 Cal., 604

37. — Statement in unsigned petition.—*Penal Code, ss. 193, 199.*—A petition not bearing the signature of the accused, and therefore not a declaration made or subscribed by him, cannot be made the foundation of a charge or conviction under section 199 of the Penal Code, but a deposition

FALSE EVIDENCE—continued.**1. GENERALLY—continued.**

Statement in unsigned petition—continued.
on oath supporting such a petition, if false, justifies a charge under section 193 of the Code. **IN THE MATTER OF RAM RYAS KOOWAR**

[7 C. L. R., 586]

38. ——— Statement in petition not requiring verification.—Unnecessary verification.—Semble.—A petition presented under Regulation XVII of 1806 not requiring verification, cannot, from the fact of its being verified unnecessarily, be made the subject of a prosecution for giving false evidence. **IN THE MATTER OF THE PETITION OF KASI CHUNDER MOZUMDAR. JUGGUT CHUNDER MOZUMDAR v. KASI CHUNDER MOZUMDAR**

[I. L. R., 6 Cal., 440; 7 C. L. R., 880]

39. ——— False statement in vakalat-nama.—Penal Code, s. 193.—The prisoner, a vakeel, presented a vakalatnamah in the District Munsif's Court signed by the defendant in a civil suit authorising the prisoner to appear for the defendant. The vakalatnamah falsely purported to have been executed before the Adighari of the village and to bear the signature of the Adighari. The prisoner was convicted under section 193 of the Penal Code. **Held** that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody. **QUEEN v. KHILASUM PUTTER.** 5 Mad., 378

40. ——— Statement in document not requiring verification.—Civil Procedure Code, 1859, ss. 119, 120.—The verification of an application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls, not under section 120, Act VIII of 1859, but under section 119 of that Act, and need not therefore be verified. **QUEEN v. KARTICK CHUNDER HALDAR**

[9 W. R., Cr., 58]

41. ——— Statement in application for new trial.—Penal Code, ss. 191, 192.—Verification of document as a plaint.—A. made an application for a new trial under section 21 of Act XI of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. **Held** (Glover, J., dissenting) that he had not thereby committed an offence under section 191 or 192 of the Penal Code. **IN RE HARAN MANDAL**

[3 B. L. R., A. Cr., 1; 10 W. R., Cr., 81]

42. ——— False verification of written statement.—Civil Procedure Code, ss. 51, 115.—Act XLV of 1860 (Penal Code), s. 191.—A person filing a written statement in a suit is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of giving false evidence within the meaning of section 191 of the Penal Code. **QUEEN-EMPERESS v. MEHRBAN SINGH**

[I. L. R., 6 All., 626]

FALSE EVIDENCE—continued.**1. GENERALLY—continued.**

43. ——— Witness deposing falsely in another's name.—Penal Code, s. 193, and ss. 416, 419.—A witness falsely deposing in another's name should be charged with giving false evidence, under section 193, and not with cheating by personation, under section 419 of the Penal Code. **REG. v. PREMA BHAI** 1 Bom., 89

44. ——— Putting forward person knowing him to be some one else.—Abetment of false evidence.—Where C. falsely represented himself to be U., and the writer of a document signed by U., and T. knowing that C. was not U., and had not written such document, adduced C. as U., and as the writer of that document,—**Held** that T. ought to have been convicted, not of intentionally giving false evidence in a judicial proceeding, but on a charge of abetting the giving of false evidence. **QUEEN v. CHUNDI CHURN NAUTH**

[8 W. R., Cr., 5]

45. ——— Statement unintentionally causing conviction of murder.—Penal Code, ss. 193, 194.—Powers of Sessions Judge.—The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. **Held** that such witness was guilty under section 193, and not under section 194, of the Penal Code, as he did not know that he would cause a conviction for murder. **QUEEN v. HARDYAL** 3 B. L. R., A. Cr., 85

46. ——— Subornation of perjury.—Penal Code, s. 196.—The provision of the Penal Code (section 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under section 196, it must be shown that the accused made some use of the false evidence after it was in existence. **QUEEN v. SURFURUDER** 1 Ind. Jur., O. S., 122

47. ——— Intentional omission to mention adjustment of decree in application for execution.—Penal Code, ss. 193, 199.—Civil Procedure Code, s. 235.—Intentional omission.—Under section 235 of the Code of Civil Procedure (XIV of 1882), the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court. **Poupayya v. Narasannah, I. L. R., 2 Mad., 216,** followed. Intentional omission to make such statement amounts to an offence under section 193 of the Penal Code (XLV of 1860). Section 199 of the Penal Code (XLV of 1860) does not apply to applications for execution containing false averments. **QUEEN-EMPERESS v. BAPUJI DAYARAM** I. L. R., 10 Bom., 288

FALSE EVIDENCE—continued.**2. FABRICATING FALSE EVIDENCE.**

48. — *Fabrication of false evidence.*—*Penal Code, s. 193 and s. 120.*—*Illegal concealment to fabricate evidence.*—The term "fabrication" in section 193 of the Penal Code refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by section 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence. *QUEEN v. RAJCOOMAR BANERJEE* [1 Ind. Jur., O. S., 105]

49. — *Verification of statement in suit for rent.*—*Act X of 1859, s. 37.*—The plaintiff brought a suit for rent claimed to be due for three years; he failed to prove his claim, and the suit was dismissed for want of evidence. He afterwards sued to recover rent for one of the same years, and recovered the amount. The Judge on appeal reversed the decree, and made an order remitting the case to the Deputy Collector to enquire under Act X of 1859, section 37, whether the plaintiff had committed perjury in the first suit, the plaint in which was verified by his agent. The 37th section of the Act requires that the statement of claim shall be verified by the plaintiff or his agent, and enacts that if the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. *Held* that there was no foundation for the order, the averment having been made by the agent, and not by the plaintiff; and besides, there was no evidence that it was untrue, there having been no finding in the first suit that the rent was not due. *TARAPERSAD ROY CHOWDERY v. GOPAL DASS DUTT* [Marsh., 72: W. R., F. B., 24] 1 Ind. Jur., O. S. 79: 1 Hay, 235

50. — *Penal Code, s. 193.*—*Making up false accounts to produce before Forest Officer.*—The making up falsely of accounts, with the intention of producing them before a Forest Officer not empowered by law to hold an investigation and take evidence, is not a fabrication of false evidence within the meaning of section 193 of the Penal Code. *RAG. v. RAMAJIRAV JIVBAJIRAV* . 12 Bom., 1

51. — *Intention to procure conviction.*—*Penal Code, s. 195.*—The prisoner was convicted under section 195 of the Penal Code of fabricating false evidence with intent to procure the conviction of a certain person of an offence. The prisoner's act was committed in a most public manner, and was not calculated to lead to the conviction of the person, nor did it appear that the prisoner took any steps to secure his conviction. *Held* that the conviction of the prisoner could not be sustained. *QUEEN v. SHIB DYAL* . . . 5 N. W., 183

52. — *Making it appear offence had been committed.*—*Failure to lay*

FALSE EVIDENCE—continued.**2. FABRICATING FALSE EVIDENCE—continued.**

Fabrication of false evidence—continued.
charge.—*Penal Code, s. 193.*—A person, having made a hole in the wall of his own house, broke open a box and removed the contents to which he believed himself entitled, but as to which there was a dispute, making the removal appear to have been the act of thieves from the outside, was charged with fabricating false evidence for the purpose of its being used in a stage of a judicial proceeding under section 193 of the Penal Code. It did not appear that any charge had been laid by the accused against any one in respect of the removal of the contents of the box. *Held* that the circumstances did not warrant the charge under section 193 of the Penal Code of fabricating false evidence. *THEWA RAM v. EMPRESS* [10 C. L. R., 167]

53. — *Statement in petition of payment on account of tenure after tenure had been set aside.*—*Penal Code, s. 193.*—A certain alleged mokurari tenure having been set aside by a Civil Court, the person who had claimed to hold such tenure in depositing money in Court, in a petition stated that the deposit was in respect of the mokurari tenure, whereupon he was charged and convicted under section 193 of the Penal Code with fabricating false evidence. *Held* that the conviction was bad. *DABEE MANTO v. RAM MOHUN MOOKHOPADHYA* . . . 10 C. L. R., 438

54. — *Attempt to commit offence.*—*Penal Code, s. 193.*—*M.* instigated *Z.* to personate *C.*, and to purchase in *C.'s* name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed *C.'s* name on such paper as the purchaser of it. *M.* acted with the intention that such endorsement might be used against *C.* in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and that *M.* was properly convicted of abetting the commission of such offence. *QUEEN v. RAMSARAN CHOWBEY, & N. W.*, 46, distinguished and observed on. *EMPRESS v. MULA* . . . I. L. R., 2 All., 105

55. — *Intention to use before Registrar.*—*Use before Court.*—*Penal Code, s. 196.*—*L.* brought a suit upon a bond, and, at the trial, sought to support his claim by a letter fabricated probably for the purpose of enabling *L.* to get the bond registered. *L.* was convicted under section 196 of the Penal Code. *Held* that if the letter was fabricated for use before the Registrar, it was no valid objection to the conviction. *LAKSHMAJI v. QUEEN-EMPRESS* . . . I. L. R., 7 Mad., 289

56. — *Framing incorrect record.*—*Public servant making false entry.*—*Penal Code, s. 219.*—When a Police Superintendent called for the report from the constable on information that a theft had been committed and reported owing to the constable's negligence, and the constable produced a false report to the effect that no theft had been committed and no information given to him,—*Held* he was not guilty under section 218 of the Penal Code. *GOVERNMENT v. ABDUL HUQ* . . . 3 Agra, Cr., 1

FALSE EVIDENCE—continued.**2. FABRICATING FALSE EVIDENCE—continued.****Framing incorrect record—continued.**

57. ————— *False report.*—*Penal Code, s. 218.*—A Kulkarni who makes a false report with reference to an offence committed in his village, with intent, &c., is punishable under section 218 of the Penal Code. *REG. v. MALHAR RAM CHANDRA* **7 Bom., Cr., 64**

58. ————— *Penal Code, s. 218.*—*Public servant.*—A public servant in charge as such of certain documents having been required to produce them, and being unable to do so, fabricated and produced similar documents with the intention of screening himself from punishment. *Held* that such fabricated documents not being records or writings with the preparation of which such public servant as such was charged, he could not legally be convicted under section 218 of the Penal Code. *EMPRESS v. MAZHAR HUSAIN* **I. L. R., 5 All., 558**

59. ————— *Public servant.*—*Forgery.*—*Penal Code, s. 218.*—*Abetment.*—*S.* was charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by *D.* *D.* made and read false abstracts whereby an incorrect record was prepared. The Court was of opinion that *D.* could not strictly be held to have committed the offence described in section 218 of the Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so that *S.* had no guilty knowledge or intention in the matter. *QUEEN v. BRIJ MOHAN LAL* **7 N. W., 134**

60. ————— *Penal Code, s. 218.*—*Intention.*—The intention is an essential ingredient in the offence contemplated by section 218, Penal Code. *QUEEN v. SHAMA CHURN ROY* **[8 W. R., Cr., 27]**

61. ————— *False entry in chowkidari book.*—*Penal Code, s. 218.*—Where a chowkidar was charged under section 218, Penal Code, with having made a false entry in a chowkidari attendance book with a view to support a charge which was made against a Sub-Inspector of having made a false report regarding the length of absence from duty of another chowkidar, and thereby to cause loss or injury to the Sub-Inspector, it was held that the intention was too remote to fall within section 218. *QUEEN v. JUNGLE LAL* **[19 W. R., Cr., 40]**

62. ————— *Penal Code, ss. 192, 218.*—*Public servant.*—A police officer, who had suppressed a document intrusted to him to forward to his superior officer, made a false entry in his official diary that the document had been so forwarded, intending that if he were prosecuted under the Police Act for suppressing the document, such entry might be used as evidence in his behalf that he had so forwarded the document. *Held* that, inasmuch as to constitute the offence of fabricating false evidence defined in section 192 of the Penal Code, the evidence fabricated must be admissible evidence, and as,

FALSE EVIDENCE—continued.**2. FABRICATING FALSE EVIDENCE—continued.****Framing incorrect record—continued.**

if such police officer had been prosecuted under the Police Act, the entry in the diary would not have been admissible in his behalf, though, contrary to his intention, it might have been used against him, such police officer was improperly convicted, in respect of such entry, of fabricating false evidence punishable under section 193 of the Penal Code. *Held*, also, that such police officer's intention in making such entry being to screen himself from punishment, he was not punishable under section 218 of the Code. *EMPRESS v. GAURI SHANKAR. I. L. R., 6 All., 42*

63. ————— *Penal Code, s. 218.*—*Public servant.*—A Treasury accountant was convicted of offences under sections 218 and 465 of the Penal Code under the following circumstances: A sum of Rs500, which was in the treasury and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then, upon two occasions, wrote reports to the effect that the Rs500 in question then stood at the payee's credit as a revenue deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the Treasury Officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-mohurrir, which, as originally drawn up, related to the sum of Rs500 already mentioned. The signature of the cheque by the Treasury Officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs500 to the Civil Court, as if it had been the first Rs500, and to the credit of the first payee's representative. The prisoner was convicted under section 465 of the Penal Code in respect of the cheque, and under section 218 in respect of the two reports above referred to. *Held* that the prisoner's intention in making the false reports was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, and that having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under section 218 of the Penal Code. *Held*, further, that as the prisoner, who was a public servant, made these reports and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant within the meaning of section 218 of the Penal Code. *QUEEN-EMPRESS v. GIRI-DHARI LAL* **I. L. R., 8 All., 653**

FALSE EVIDENCE—continued.**3. CONTRADICTORY STATEMENTS.**

64. ———— *Circumstances and intention of contradictory statement.*—*Penal Code, s. 198.*—The mere fact that a person has made a statement which contradicts a previous statement, is not itself necessarily sufficient to bring him within section 198, Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must in each case be considered before it can be held that the offence has been committed. *QUEEN v. SOONDUR MOOHOOORE* **9 W. R., Cr., 25**

QUEEN v. DENOMATH BUJJUR . **9 W. R., Cr., 52**

65. ———— *Weight to be given to contradictory statements.*—To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for this purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the person charged, although not made on oath. Such a statement when satisfactorily proved is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence, and on precisely the same ground,—that it is an admission of the accused person inconsistent with his innocence. As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony. *QUEEN v. ROSS* **6 Mad., 342**

66. ———— *Alternative charge.*—*Statements made before Civil and Criminal Courts.*—Where a person makes one statement before the Magistrate, and a directly different statement before the Civil Court, his commitment on an alternative charge, after the consent of the Civil Court has been obtained under section 169 of the Code of Criminal Procedure, is strictly legal. *QUEEN v. OORTUR NARAIN SINGH* **8 W. R., Cr., 79**

67. ———— *Inconsistent statements in judicial proceeding.*—Where a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false. *REG. v. GANGOJI BIN PANDJI* **5 Bom., Cr., 49**

68. ———— *Penal Code, s. 72.*—*Alternative finding.*—Proof of contradictory statement on oath, or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under section 72 of the Penal Code, and sections 242, 331, and 363 of

FALSE EVIDENCE—continued.**3. CONTRADICTORY STATEMENTS—continued.****Alternative charge—continued.**

the Criminal Procedure Code. The English law upon the subject stated. *QUEEN v. PALANI CHETTY* **[4 Mad., 51]**

69. ———— *Statement inconsistent with previous one.*—*Criminal Procedure Code (Act XXV of 1861), s. 172.*—Where a witness makes a statement before the Sessions Court which contradicts that made by him before the committing officer, and no evidence is given to show which statement is true, it cannot, under section 172, Act XXV of 1861, be said that an offence has been committed under the cognisance of the Sessions Court. A Judge's duty in dealing with the contradictory statements of a witness discussed. *QUEEN v. NOMAL* **[4 B. L. R., A. Cr., 9: 12 W. R., Cr., 69]**

70. ———— *Statements inconsistent with previous one.*—*Penal Code, s. 198.*—The statement made by a witness before the Magistrate was opposed to the statement made by him before the Sessions Court. On a charge of perjury being made,—*Held* that a statement made by the accused before one Court was no evidence of the falsity of a contrary statement before another Court to support a conviction of giving false evidence. *Held*, also, that neither the Judge nor jury had any right to assume that an explanation could not have been given consistent with both the statements. *QUEEN v. KOLA* . **4 B. L. R., A. Cr., 4: 12 W. R., Cr., 66**

71. ———— *Plea of guilty on one charge.*—*Effect of.*—Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. *QUEEN v. HOSAMIN ALI* . . . **8 B. L. R., Ap., 25**

72. ———— *Legality of conviction.*—The prisoner, who, as a witness in a former case, had made one statement before the Magistrate and a contrary one before the Sessions Judge, was tried and convicted of having either given false evidence before the Judge or given false evidence before the Magistrate. *Held* (*NORMAN and CAMPBELL, JJ.*, doubting), the conviction was right. *Held*, also (*CAMPBELL, J.*, differing), the evidence taken before the Judge was admissible on the charge of having given false evidence before the Magistrate. *QUEEN v. ZAMIRAN* . . . **B. L. R., Sup. Vol., 521 [6 W. R., Cr., 65]**

73. ———— *Alternative statements.*—*Perjury.*—*Per NORMAN, J.*—*Quere*, notwithstanding the decision of the Full Bench in *Queen v. Zamiran*, as to the correctness of conviction for perjury upon alternative statements. *QUEEN v. MATI KHOWA* . . . **3 B. L. R., A. Cr., 36 [12 W. R., Cr., 31]**

FALSE EVIDENCE—continued.**3. CONTRADICTORY STATEMENTS—continued.****Alternative charge—continued.**

74. ————— *Criminal Procedure Code (Act X of 1872), s. 455, sch. iii.—Penal Code (Act XLV of 1860), s. 193.*—Where a person was convicted of giving false evidence upon an alternative charge in the form given in schedule iii of the Criminal Procedure Code,—*Held* by the majority of the Court (JACKSON and PHAR, JJ., dissenting), that the conviction was good, notwithstanding the jury had not distinctly found which of the two statements charged was false. *Held per* JACKSON, J., that such a charge is bad, and further that an alternative finding upon such charge is invalid. *Held per* PHAR, J., that although a person may be lawfully tried upon such a charge, still the Court or jury must, for a conviction, find specially which branch of the alternative is true. *QUEEN v. MAHOMED HOOMAYOON SHAW*

[13 B. L. R., F. B., 324: 21 W. R., Cr., 72]

Contra, QUEEN v. BIDU NOSHYO

[13 B. L. R., 325, note: 11 W. R., Cr., 37
12 W. R., Cr., 11]

75. ————— *Proof of truth of each branch of charge.*—To support a finding upon an alternative charge of perjury there must be legal evidence of the truth of each branch of the charge. *QUEEN v. GONOWAI*. 22 W. R., Cr., 2

76. ————— In order to sustain any conviction for giving false evidence upon an alternative charge when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. *NATHU SARKI v. QUEEN-EMPRESS*

[1 L. R., 10 Cal., 405]

77. ————— *Validity of conviction.—Statements which cannot both be true.*—It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue. *Reg. v. Jackson, 1 Lewis, C. C., 370; Reg. v. Wheatland, 8 C. & P., 238; and Reg. v. Harris, 5 B. & Ald., 926*, referred to. Section 455 of Act X of 1872 (Criminal Procedure Code) is no authority for framing against a person accused of giving false evidence who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative;" that word, as used in that section, meaning that, where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties. *Held*, therefore, where three persons were committed for trial jointly charged with "having on or about

FALSE EVIDENCE—continued.**3. CONTRADICTORY STATEMENTS—continued.****Alternative charge—continued.**

the 26th September 1881, or the 18th October 1881, being legally bound upon oath to state the truth, knowingly on those days, regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under section 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons instead of several and specific in regard to each of them; that it was further bad because it did not distinctly and in terms allege which of the statements was false; that, assuming a committal upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against each of the accused persons specifically setting forth the statement alleged to be false, and should then have proceeded to try each of them separately; and that, there being no evidence that either of the statements made by two of such persons was false, except that it was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the statements was false. *EMPEROR v. NIAZ ALI*

[1 L. R., 5 All., 17]

78. ————— *Charge in alternative of two different offences under two different sections of Penal Code.—False information to public servant.—Criminal Procedure Code, ss. 225, 232, 233, 537.—Penal Code (XLV of 1860), ss. 182 and 193.—Forest Act, VII of 1878.*—The accused was charged, in the alternative, by the trying Magistrate as follows: "I, W. W. Drew, Magistrate, first class, hereby charge you, Ramji Sajabarao, as follows: That you, on or about the 18th day of October 1882, at Nandarpada, stated that you had seen Vishnu Vaman and Mahadu Lakshman carrying teakwood from Gohe Forest to Narayan Ramchandra, range forest officer, and on 14th February 1885 you stated on oath before the first class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under section 182 or section 193 of the Penal Code (XLV of 1860) and within my cognisance; and I hereby direct that you, Ramji Sajabarao, be tried by the said Court on the same charge." At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under section 182 or section 193 of the Penal Code (XLV of 1860). *Held* that the charge was bad in law, being an alternative charge in a form forbidden by section 233 of the Criminal Procedure Code (X of 1882), which directs that, for every distinct offence of which any person is charged, there shall be a separate charge. Nor could the accused be tried upon a charge framed in the alternative as in the form given in schedule V-XXVIII-(4) of the Criminal Procedure Code (X of 1882); for, upon the facts alleged, there was no way of charging him with one distinct offence on the

FALSE EVIDENCE—continued.**3. CONTRADICTORY STATEMENTS—continued.****Alternative charge—continued.**

ground of self-contradiction. He could not successfully be charged, under section 193 of the Penal Code (XLV of 1860), on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under section 182 of the Penal Code, for he only once gave information to a public servant. *Held* also that, having regard to sections 225, 232, and 537 of the Criminal Procedure Code (X of 1882), the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence reversed. In charges founded upon supposed contradictory statements every presumption in favour of the possible reconciliation of the statements must be made. **QUEEN-EMPERESS v. RAMJI SAJABARAO**

[I. L. R., 10 Bom., 124

79. ——— Validity of.—
*Conviction on.—Penal Code (Act XLV of 1860), s. 193.—Criminal Procedure Code (Act X of 1882), ss. 283, 554, and sch. 5, XXVIII-II-(4).—*A prisoner was convicted on an alternative charge in the form provided by schedule 5, XXVIII-II-(4) of the Criminal Procedure Code (Act X of 1882) of having given false evidence, such evidence consisting of contradictory statements contained in one deposition while he was under cross-examination and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false. *Held* (NORRIS, J., dissenting) that section 233 of the Criminal Procedure Code did not affect the matter, and that the conviction was good. *Semble per* WILSON, J.—The decision in *Queen v. Bedoo Noshyo*, 12 W. R., Cr., 11, though a guide to the discretion of Courts in framing and dealing with charges, was not intended to, and does not, affect the law applicable to the matter. **HABIBULLAH v. QUEEN-EMPERESS**

[I. L. R., 10 Calc., 937

80. ——— Penal Code, s. 193.—Criminal Procedure Code, sch. V, No. XXVIII-(4).—Assignment of false statement not necessary.—English law.—In a charge under section 193 of the Penal Code, it is not necessary to allege which of two contradictory statements upon oath is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon oath at one time, and a directly contradictory statement at another. *Queen v. Zamiran*, B. L. R., Sup. Vol., 521; 6 W. R., Cr., 65; *Queen v. Palany Chetty*, 4 Mad., 51; and *Queen v. Mahomed Hoomayoon Shah*, 13 B. L. R., 324, followed. *Empress v. Niaz Ali*, I. L. R., 5 All., 17, overruled. *Per* DUTHOIT, J.—Every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable before a conviction can be had upon the ground that one of them is necessarily false. The English cases upon this

FALSE EVIDENCE—continued.**3. CONTRADICTORY STATEMENTS—continued.****Alternative charge—continued.**

subject are irrelevant to the interpretation of the law of India, since the Indian Legislature has not followed the law of England in regard to perjury. *Trimble v. Hill*, L. R., 5 Ap., Cas., 342; and *Kathama Natchiar v. Dorasinga Tevar*, L. R., 2 I. A., 159, referred to. **QUEEN-EMPERESS v. GHULET**

[I. L. R., 7 All., 44

4. PROOF OF CHARGE.**81. ——— Retraction of statements.**

—Locus penitentiae for witness.—Held by the majority of the Court (dissentients, JACKSON, J.) that there ought to be a *locus penitentiae* for witnesses who have deposed falsely to retract their false statements. **QUEEN v. GULLIN MULLICK**

[W. R., 1864, Cr., 10

82. ——— Proof of charge.—Uncorroborated evidence of single witness.—Penal Code (Act XLV of 1860), s. 193.—A person cannot be convicted in the mofussil of giving false evidence upon the uncorroborated evidence of a single witness. **CAMPBELL, J., dissenting. QUEEN v. LALCHAND KOWRAH**

[1 Ind. Jur., N. S., 83; 5 W. R., Cr., 23

QUEEN v. MOHIMA CHUNDER CHUCKERBUTTY

[5 W. R., Cr., 77

83. ——— Uncorroborated evidence of single witness.—A conviction for perjury should not be sustained on the bare testimony of one witness. **QUEEN v. KHOAB LALL**

[9 W. R., Cr., 66

84. ——— Evidence of single witness.—Evidence to establish fact of statement.—The evidence of one witness in cases of perjury is sufficient to establish the *factum* of the statement which is charged as being false. **QUEEN v. ISSUR CHUNDER GHOSH**

14 W. R., Cr., 53

85. ——— Comparison of signatures.—Testimony of single witness.—Comparison of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence. **QUEEN v. BAKHOREN CHOWBEY**

5 W. R., Cr., 98

5. TRIAL OF CHARGE.

86. ——— Joint trial.—Penal Code, ss. 193, 196.—Using evidence known to be false.—Separate trial.—Where several persons are accused of having given false evidence in the same proceeding, they should be tried separately. *A, S, B, D, and P.* were jointly tried—*A.* in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; *S, B, D, and P.* on charges of giving false evidence in the

FALSE EVIDENCE—continued.**5. TRIAL OF CHARGE—continued.****Joint trial—continued.**

same judicial proceeding as to such payments. The Court (STRAIGHT, J.), being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together, set aside the convictions and ordered a fresh trial of each of the accused separately. *EMPRESS v. ANANT RAM* [I. L. R., 4 All., 293]

87. — *Examining witnesses only once in four cases.*—When four persons were accused of having given false evidence in the same proceeding, and the Sessions Judge, while professing to try each accused separately, heard the evidence of the witnesses only once,—*Held* that this was substantially trying the four prisoners together, and was an improper mode of procedure. *NATHU SHEIKH v. QUEEN-EMPRESS* . I. L. R., 10 Cal., 405

FALSE IMPRISONMENT.*See WRONGFUL CONFINEMENT.***[3 Mad., 38]**

— *Wrongful arrest under decree already satisfied.*—*Mistake of officers of the Court.*—*Cause of action.*—*Good faith.*—*Limitation Act, XV of 1877, s. 23, and sch. II, art. 19.*—On the 27th June 1883, the plaintiff was arrested by a bailiff of the Small Cause Court at Bombay, under a writ of arrest for the amount of a decree obtained by the defendant on the 2nd May 1883 against the plaintiff. On arrest the plaintiff informed the bailiff that the money due under the decree had already been paid, as was the fact. Plaintiff could not produce the receipt of payment, and the bailiff refused to raise the arrest until payment was made. The plaintiff thereupon paid the money under protest, and was set at liberty. The mistake was subsequently discovered, and the money was refunded to the plaintiff. It appeared that, prior to plaintiff's arrest, defendant's clerk had enquired of the head cashier of the Small Cause Court if the amount of the decree had been paid, but was told it was not, and a certificate of non-payment was issued. In conformity with the usual practice of the Court, the chief clerk of the Court, on receipt of the certificate, issued the writ of arrest under the seal of the Small Cause Court, and the plaintiff was arrested. In March 1884, the plaintiff presented a petition to the High Court for leave to sue as pauper, and claimed Rs25,000 from first defendant as damages for the wrongful arrest. When the petition came on for enquiry into the pauperism of the plaintiff, the presiding Judge was of opinion that it disclosed no cause of action, and the plaint was returned to the plaintiff to be amended, but at the same time allowed to be filed. The plaintiff subsequently desired to add as party-defendants the cashier and the chief clerk of the Small Cause Court, and on 5th July 1884, took out a summons calling upon the defendants to show cause why his amended plaint should not be received on the file of the Court in place of his first petition. It was contended for the cashier and the chief clerk of the Small Cause Court that the suit against them was

FALSE IMPRISONMENT—continued.

barred by limitation. *Held*, as regards the first defendant, that the plaint should be rejected, as there was no bad faith, fault or irregularity, on the part of the first defendant so as to make him responsible for the wrongful arrest. The plaintiff's imprisonment having taken place under a warrant of the Court issued in regular manner, and such Court being of competent jurisdiction, the plaintiff had no cause of action as against the first defendant,—the error was wholly and entirely the error of the officers of the Small Cause Court. *Held*, also, as regards the cashier and the chief clerk of the Small Cause Court, that the plaintiff's suit was barred, as more than one year had elapsed from the date of the termination of the plaintiff's imprisonment. *FISHER v. PEARSE* [I. L. R., 9 Bom., 1]

FALSE PERSONATION.

1. — *Personation before Registrar.*—*Registration Act XX of 1866, ss. 93 and 94.*—*Penal Code, s. 419.*—A vendor proceeded in company with three persons to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's office; one of them there personated the vendor, and got registry of the deed. She was convicted of cheating by false personation, and the other two of abetting that offence. *Held*, on revision, that as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under sections 93 and 94 of Act XX of 1866, and not under section 419 of the Penal Code. *QUEEN v. LUTHI BEWA* 2 B. L. R., A. Cr., 25

IN RE LUTHI BEWA 11 W. R., Cr., 24

2. — *Personating party required to complete conveyance.*—Three persons who put up a fourth to personate one whose authority was required to complete a conveyance of immovable property, were held guilty under section 94 of the Registration Act XX of 1866. *QUEEN v. SOLEEMOODDEEN* 7 W. R., Cr., 99

3. — *Penal Code, s. 205.—Personating imaginary person.*—Under section 205 of the Penal Code it is criminal to personate an imaginary person. *QUEEN v. BITTOO KAHAR* [1 Ind. Jur., O. S., 123]

4. — *Fraudulent gain.*—Fraudulent gain or benefit to the offender is not an essential element of the offence of false personation under section 205 of the Penal Code, and a conviction for such offence may be upheld even where the personation is with the consent of the person personated. *EX PARTE SUPPAKON* 1 Mad., 450

5. — *Personating imaginary person.*—To constitute the offence of false personation under section 205 of the Penal Code, it is not enough to show the assumption of a fictitious name; it must also appear that the assumed name was used as a means of falsely representing some other individual. *Reg. v. Bittoo Kahar*, 1 Ind. Jur., O. S., 123, dissented from. *QUEEN v. KADAR RAVATTAN* 4 Mad., 18

FALSE PERSONATION.—Personation before Registrar—continued.

6. ——— *Intention of falsely personating.*—It is necessary to a conviction for false personation, under section 205 of the Penal Code, that the accused should have assumed the name and character of the person he is charged with having personated. The fact that he presented a petition in Court in the name of that individual, held, under the circumstances of the case, to be insufficient to show any intention of falsely personating such person. *QUEEN v. NARAIN ACHARY*. 8 W. R., Cr., 80

FAMILY CUSTOM.

See CASES UNDER CUSTOM.

See EVIDENCE ACT, s. 32, CL. 7.
[10 B. L. R., 263]

See CASES UNDER HINDU LAW—CUSTOM.

FAMILY DWELLING-HOUSE.

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

[B. L. R., Sup. Vol., 173
5 W. R., 218
6 W. R., Mis., 75
8 W. R., 239
I. L. R., 10 Cal., 244]

See HINDU LAW—FAMILY DWELLING-HOUSE.

See INJUNCTION—UNDER CIVIL PROCEDURE CODES . 6 B. L. R., 571

See LIMITATION ACT, 1877, ART. 127 (1859, s. 1, CL. 13) . 12 B. L. R., 349

See PARTITION—MODE OF EFFECTING PARTITION . I. L. R., 3 Cal., 514

See CRIMINAL TRESPASS.
[6 B. L. R., Ap., 80]

FEEs, ON WHAT VALUATION OF PROPERTY CALCULATED.

See PLEADER—REMUNERATION.
[I. L. R., 1 All., 709]

FERGUSON'S ACT (9 GEO. IV, C. 38).

See LAND TENURE IN BOMBAY.
[4 Bom., O. C., 1]

FERRY.

See JURISDICTION OF CIVIL COURT—FERRIES.

— Infringement of right of—

See RIGHT OF SUIT—FERRY.
[I. L. R., 4 Cal., 599]

— Lease of Government—

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.
[I. L. R., 2 All., 411]

FERRY—continued.**— Flying boat for hire near public—**

See CRIMINAL TRESPASS.
[I. L. R., 1 All., 527]

See PENAL CODE, s. 188.
[I. L. R., 1 All., 527]

— Right of—

See FISHERY, RIGHT OF— . 5 N. W., 95

— Suit for compensation for loss of, by resumption.

See JURISDICTION OF CIVIL COURT—FERRIES . B. L. R., Sup. Vol., 630

1. ——— *Right of ferry.—Right of private ferry.*—The right of establishing a private ferry and levying tolls is recognised in British India. *PARMESHARI PROSHAD NARAIN SINGH v. MAHOMED SYUD* . I. L. R., 6 Cal., 608; 7 C. L. R., 504

2. ——— *Right of owner of both banks of a river.*—The mere fact of being the owner of both banks of a river does not give the right of ferry. *SOPIE MERDHA v. NOBO KISHORE* [3 W. R., 236]

3. ——— *Right to establish new ferry.—Right to cross river or jhil in other way than by ferry.*—A stream if navigable is of itself a public highway. In the case of a stream, therefore, a riparian proprietor might start in a boat from any point on his own side and proceed to any point at which he would have a right to land on the other side. But in the case of a jhil, the soil and freehold of which is probably vested in some particular individual, persons might be in the habit of crossing it from point to point by means of a ferry-boat belonging to the owner, and indeed might have a right to do so. But such right, if it existed, would not lead to any inference that any proprietor of lands on the banks of the jhil would have any right to cross either way to the terminus of a public highway in any other manner than between the ascertained points and by the accustomed means, *viz.*, the owner's ferry boat. *HUNOOMAN DOSS v. SHAMACHURN BHUTTA* [1 Hay, 426]

4. ——— *Change in starting-point owing to change in course of river.*—The right to a ferry-ghaut cannot follow the starting-point of the ferry wherever it may be carried by a change in the course of the river, unless the new position is within the possessor's own land. *GORDON v. GOPPE SOONDURHE DOSSAN* . . . 25 W. R., 53

5. ——— *Right to land at a ghaut as part of right of ferry.—Form of suit.*—A plaintiff may recover possession of a ferry, of which he has been dispossessed by the defendant, though the form of his action may have been for obtaining possession of a ghaut. The right to ply the ferry may include also a right at certain seasons of the year to land upon or start from a part of the river bank not included in the land taken for the ferry. *BROVO KISHORE CHOWDERAIN v. BILASH MONER CHOWDERAIN* . . . 5 W. R., 195

FERRY.—Right of ferry—continued.

6. — *Rights of private ferry.*—*Invasion of right of ferry by order of Magistrate.*—*Beng. Reg. VI of 1819.*—In a suit to maintain the old boundaries of a ferry, which had been invaded by an order of the Magistrate extending the boundaries of a public ferry, the plaintiffs asserted that they had theretofore without charging toll transported in their own boats or in boats hired by them their labourers and cultivators and implements of husbandry, and that in the exercise of this right the order of the Magistrate was injurious to them. *Held* that the order of the Magistrate extending the boundaries of the public ferry was an invasion of their ancient right to cross in whatever ferry boat they liked; as by section 6 of the Regulation (VI of 1819), persons are prohibited from employing ferry boats plying for hire at, or in the vicinity of, a public ferry, without the previous sanction of the Magistrate or Joint Magistrate, thus making persons dependent on the public ferry, and liable to whatever toll may be levied on the public ferry. *RAM GOBIND SINGH v. MAGISTRATE OF GHAZIPORE* . 4 N. W., 146

7. — *Management of ferry.*—*Beng. Reg. VI of 1819, s. 18, cl. 2.*—Clause 2, section 18, Regulation VI of 1819, only applies where there has been an accident. Where the Magistrate thinks that a ferry is improperly kept, and is in a dangerous condition, he should proceed under section 4. *QUEEN v. DEBYANUTOOLLAH* . 7 W. R., Cr., 32

8. — *Proprietary rights, Interference with.*—*Dispossession.*—There are proprietary rights in a private ferry of such a nature that another party may not so interfere with the profits arising therefrom by running a boat, if not exactly on the same line, at least within such a distance as for all practical purposes would be the same as if it were on the same line. Preventing parties from crossing in a person's ferry and driving his men away amount to dispossession. *KISHORE LALL ROY v. GOKOOL MONEE CHOWDHRAIN* . 16 W. R., 281

9. — *Suit to reopen ferry.*—*Bengal Act I of 1866, s. 2.*—A suit to re-open a ferry which had been included in a settlement of an estate obtained by plaintiff from Government, but which had been closed by orders of the Assistant Magistrate, was held not to be maintainable, the ghaut where plaintiff wished to reopen it being within two miles of the place at which a public ferry was established. *RAM JEWAN SINGH v. COLLECTOR AND MAGISTRATE OF SHAHABAD* . 15 W. R., 132

10. — *Rival ferry.*—*Interference with existing ferry.*—A rival ferry cannot be set up so as to interfere with proprietary rights in an existing ferry,—that is to say, under circumstances involving direct competition with such ferry. *NARAIN SINGH ROY v. NURENDEO NARAIN ROY. NURENDEO NARAIN ROY v. NARAIN SINGH ROY* . 22 W. R., 269

11. — *Stipulation in lease of land that no ferry is to be made.*—*Right of private ferry.*—It is quite competent to a lessor, when granting a lease of his land, to stipulate that no ferry shall be established thereupon to the prejudice of his

FERRY.—Stipulation in lease of land that no ferry is to be made—continued.

own ferry (existent or possible), and it is quite competent to a lessee to agree to such a stipulation. *JUGGUT CHUNDER CHOWDHRY v. BHURUT CHUNDER CHOWDHRY* . 23 W. R., 237

FERRIES ACT, XXXV OF 1850 (BOMBAY).

— *Illegal conviction under.*—On a reference by a Sessions Judge, a conviction and sentence by a District Magistrate under the Bombay Ferries Act for conveying passengers for hire from Uran to Bombay was reversed, as the act charged did not constitute an offence under any section of the Act. *REG. v. MALHARI BIN SHIVJI* . 3 Bom., Cr., 41

FIDUCIARY RELATIONSHIP.

See ATTORNEY AND CLIENT.

[I. L. R., 3 Calc., 473

1 N. W., 1

4 W. R., 86

2 Ind. Jur., N. S., 160

See TRUSTEE . Bourke, O. C., 292

See VENDOR AND PURCHASER—INVALID

SALES . 1 B. L. R., A. C., 95

[2 N. W., 153

Cor., 57

FIERI FACIAS, SALE BY SHERIFF UNDER—

See HIGH COURT, JURISDICTION OF—

CALCUTTA—CIVIL . 24 W. R., 366

[8 W. R., 4

See SALE IN EXECUTION OF DECREE—

SETTING ASIDE SALE—RIGHTS OF PUR-

CHASERS—RECOVERY OF PURCHASE-

MONEY . I. L. R., 1 Calc., 55

[I. L. R., 3 Calc., 806

FINANCIAL RESOLUTION, 2004, 14th JULY, 1871.

See COURT FEES ACT, SEH. I, ART. 11.

[11 B. L. R., Ap., 39

FINE.

See ARMS ACT, 1860.

[I. L. R., 1 Bom., 306

See COMPENSATION—CRIMINAL CASES—

LOSS OR INJURY CAUSED BY OFFENCE.

[I. L. R., 6 Mad., 286

7 Mad., Ap., 13

5 Bom., Cr., 41

7 Bom., Cr., 73

2 C. L. R., 507

See RIGHT OF SUIT—TORTS.

[3 Agra, 390

See CASES UNDER SENTENCE—IMPRISON-

MENT—IMPRISONMENT AND FINE.

See CASES UNDER SENTENCE—IMPRISON-

MENT—IMPRISONMENT IN DEFAULT OF

FINE.

FINE—continued.

Distribution of—

See ACT XIII OF 1867.

[8 B. L. R., Ap., 7

For avoiding service of summons.

See WITNESS—CIVIL CASES—ABSCONDING WITNESSES . 1 B. L. R., A. C., 186

For continuing offence.

See CONVICTION.

[1 B. L. R., O. C., 41: 18 W. R., Cr., 44, note

9 B. L. R., Ap., 35: 18 W. R., Cr., 44

12 B. L. R., Ap., 2

21 W. R., Cr., 31

25 W. R., Cr., 6

For neglect to take out certificate.

See ACT IX OF 1868.

[2 B. L. R., Ap., 40

For non-attendance before Collector in partition proceedings.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[8 B. L. R., 230

For suffering premises to be in a filthy state.

See BENG. MUNICIPAL ACT, 1864, s. 67.

[8 B. L. R., Ap., 9: 16 W. R., Cr., 70

Realisation of—

See ACT XXI OF 1856.

[8 B. L. R., Ap., 47

Refund of, on quashing conviction.

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL.

[1 L. R., 1 Calc., 354

1. ——— Compensation.—*Criminal Procedure Code, 1861, ch. 14.*—A fine cannot be awarded as compensation in a case falling under chapter 14, Code of Criminal Procedure. *QUEEN v. NIJANUND* [3 W. R., Cr., 60

2. ——— Excise Act XXI of 1856.—*Power of Magistrate.—Criminal Procedure Code, 1861, s. 22.*—A Magistrate may impose a fine exceeding Rs. 1,000 under the Excise Act, XXI of 1856, section 22 of the Code of Criminal Procedure notwithstanding. *QUEEN v. SUREOP CHUNDER DUTT* [7 W. R., Cr., 29

3. ——— Cattle Trespass Act, 1857.—*Fine levied by pound-keeper under.—Punishment on conviction of offence.—Act XXVI of 1850.*—A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence, and it is an error to hold that a person cannot be tried for an offence under Act XXVI of 1850, because he has paid a fine under section 6 of the Cattle Trespass Act III of 1857. *REG. v. DUEGARAM MADHAVRAM* 7 Bom., Cr., 55

FINE—continued.

4. ——— Cattle Trespass Act, I of 1871, s. 22.—*Fine besides compensation.*—Section 22 of Act I of 1871 does not provide for a fine in addition to compensation. *ANONYMOUS*. 7 Mad., Ap., 24

5. ——— License Tax.—*Act XXIX of 1867, s. 15.—Amount of fine.*—Under section 15, Act XXIX of 1867, the fine to be imposed for non-payment of the tax could not be less than the amount stated in the notice. *QUEEN v. BISSESSUR SEIN* [9 W. R., Cr., 62

6. ——— Act XXIX of 1867, s. 3.—*Previous fine.*—Under section 3, Act XXIX of 1867, a person once fined for not taking out a license was not liable to a second fine, or to any further demand for the tax. *IN THE MATTER OF DOORGA CHURN GIREE*. 9 W. R., Cr., 64

7. ——— Omission to give notice to party against whom order is made.—*Order to repair fence.*—No order fining a party for not repairing a fence ought to be passed without an information against him and a hearing. *QUEEN v. SHADHU CHURN GHOSE*. 23 W. R., Cr., 63

8. ——— Levy of fine.—*Compensation to complainant.—Civil Procedure Code, 1872, s. 308.—Levy of fine.—Procedure.*—The proper course of procedure under section 308 of the Code of Criminal Procedure was to impose a fine, and out of the fine realised to direct payment to the complainant of such amount as the Court thinks fit, having regard to the provisions of the section. *MOHESH MUNDUL v. BHOLA NATH MUNDUL*. 3 C. L. R., 404

9. ——— Costs, Order for.—*Compensation to complainant.—Criminal Procedure Code, 1872, s. 308.—Court Fees Act, 1870, s. 31.—A., B., and C. having been convicted of mischief, the Joint Magistrate sentenced A. to one month's imprisonment, and B. and C. each to pay a fine of Rs. 10. He also directed that Rs. 12 should be paid to the complainant. Held that the order for costs was not a fine to be applied under the provisions of section 308, Criminal Procedure Code; that what portion of the Rs. 12 was payable by each of the accused being undetermined, it could not be said that A. was sentenced to fine and imprisonment, and therefore no appeal lay; and that as the case was one in which the police could not arrest without warrant, the Magistrate had power to award costs under section 31 of the Court Fees Act, 1870, but that these costs must be limited to costs out of pocket. *MOHESH MUNDUL v. BHOLANATH BISWAS*. 3 C. L. R., 405, note*

10. ——— Fine, Amount of.—*Criminal Procedure Code, 1861, s. 63.—Fines inflicted by Magistrate.*—The description of fine which it was the object of section 63 of the Criminal Procedure Code to prohibit was a fine which it would be impossible or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence. *Quare.*—Whether section 63 has any application to fines inflicted by a Magistrate. *IN THE MATTER OF THE PETITION OF ABDUOOR RUHMAN* [7 W. R., Cr., 37

FINE—continued.

11. ——— Power of Court to dispose of fine.—The Court had no power to dispose of fines inflicted upon prisoners; such power existed in Government alone. *QUEEN v. GOLUCK DASS*

[1 Hyde, 282

12. ——— Power of High Court to award fine to prosecutor on conviction for felony.—*Felony.*—The High Court had power to award, by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court, in the exercise of its original criminal jurisdiction. *REG. v. HOSSEIN JAM*

2 Ind. Jur., N. S., 190

13. ——— Order of part of fine to witness.—*Proof of loss.*—An order directing the payment to a witness of a portion of the amount of fine levied on an accused, held to be illegal in the absence of proof that the witness suffered any loss owing to the conduct of the accused. *QUEEN v. KARTICK CHUNDER HALDAR*

9 W. R., Cr., 58

14. ——— Order for part of fine to Ameen.—*Deputation to restore landmarks.*—The Joint Magistrate was held not competent to direct, under section 44 of the Code of Criminal Procedure, that a portion of a fine inflicted under section 434 of the Penal Code be paid to an Ameen for the purpose of paying the expense of his deputation to restore the landmarks which had been destroyed by the opposite party. *QUEEN v. MOORUT LALL*

[6 W. R., Cr., 93

15. ——— Order for payment of municipal taxes out of fine.—*Power of Magistrate.*—A Deputy Magistrate had no authority to order arrears of municipal tax due by a person to be paid out of a fine levied on him. *QUEEN v. BROJO KISHORE DUTT*

8 W. R., Cr., 17

16. ——— Fine for contempt of Court.—*Omission to state reasons for.*—A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted the High Court set aside the order inflicting a fine. *IN THE MATTER OF THE PETITION OF PANCHANADA TAMBIRAN*

[4 Mad., 229

17. ——— Procedure to enforce fine.—*Madras Act V of 1865.*—The procedure to be followed in enforcing the fines from persons convicted under Act XXIV of 1859 (Police Act), was that laid down in Madras Act V of 1865. *ANONYMOUS*

[3 Mad., Ap., 9

18. ——— Levy of fine.—*Distress.*—*Criminal Procedure Code, 1861, s. 61.*—“Court.”—In every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magis-

FINE—Levy of fine—continued.

trate may levy a fine imposed by his predecessor; but the Court which levies the fine must be the same as the Court which imposed it. *CHUNDER COOMAR MITTER v. MODHOOSOODUN DEY*

[9 W. R., Cr., 50 F. R.

19. ——— Liability for fine after imprisonment in default.—An offender who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belonging to him which may be found within the jurisdiction of the Magistrate of the district, whether the officer who inflicted the fine issued any special directions on the subject or not (*disentente*, *SETON-KARR, J.*). *QUEEN v. MODHOOSOODUN DEY*

3 W. R., Cr., 61

20. ——— Recovery of, from immoveable property.—*Criminal Procedure Code, 1861, s. 61.*—*Penal Code, s. 70.*—On a reference as to whether the restriction for the recovery of fines to moveable property (*Criminal Procedure Code, section 61*) applied only during the lifetime of the offender, and whether the fine could after his death be recovered, under section 70 of the Penal Code, from his immoveable property, the Court was of opinion that the law had only provided for the distress and sale of the moveable property, and that there was no way in which immoveable property could be made liable. *REG. v. LALLU KARWAR*

[5 Bom., Cr., 63

21. ——— Refund of fine.—*Imprisonment after payment of fine.*—A prisoner was sentenced to imprisonment and fine, and in default of payment of the latter, to a further time of imprisonment. He paid a portion of the fine, but that fact not having been communicated to the jailor, underwent the entire further term of imprisonment. Held that, under these circumstances, the Court had no power to order the fine to be refunded. *REG. v. NATHA MULA*

4 Bom., Cr., 37

FIRE CAUSED BY SPARK FROM ENGINE.

See RAILWAY COMPANY . 14 B. L. R., 1

FIRE, LOSS BY—

See BILL OF LADING.

[I. L. R., 4 Calc., 736

FIRE-BALL, POSSESSION OF—

See ATTEMPT TO COMMIT OFFENCE.

[3 B. L. R., A. Cr., 55

FIRM, MEMBERS OF—

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—PERSONS BY WHOM RIGHT MAY BE ACQUIRED.

[I. L. R., 4 Calc., 957

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FIRM, SUIT AGAINST—

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[2 B. L. R., S. N., 6
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See RESUMPTION—RIGHT TO RESUME.

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See RIGHT OF OCCUPANCY—ACQUISITION
OF RIGHT—SUBJECTS OF ACQUISITION.

[I. L. R., 4 Cal., 797, 961
2 W. R., Act X, 19
23 W. R., 438

Continuing exercise of, after prohibition.

See CRIMINAL TRESPASS.

[9 B. L. R., Ap., 19

Infringement of, in public river.

See CRIMINAL TRESPASS.

[I. L. R., 2 Cal., 354

Suit for damages for infringement of, in sea.

See JURISDICTION OF CIVIL COURT—
FISHERY RIGHTS

[I. L. R., 2 Bom., 19

1. ———— **Nature of right.**—*Incorporeal hereditament.*—Jalkar, or the right of fishery, may exist in India as an incorporeal hereditament, and as a right to be exercised upon the land of another.

FORBES v. MIR MUHAMMAD HOSSEIN

[12 B. L. R., P. C. 210: 20 W. R., 44

2. ———— **Right to soil beneath water.**
—*Right to jalkar.*—The right to a jalkar by no means involves a right to the soil when the jalkar is either dried or filled up by accumulation of soil.

RADHA MOHUN MUNDUL v. NEEL MADHAB MUNDUL 24 W. R., 200

3. ———— **Right to soil and water in one person.**—*Interest in the soil.*—Though the right of jalkar does not imply any interest in the soil, yet where it is found as a fact that both water and land are the property of the zemindar as such, the two rights are not to be separated.

CHUNDER COOMAR ROY v. BURUDA KANT ROY

[W. R., 1864, 63

4. ———— **Right to tank.**—*Fishing in tank.*—The exercise of the right of fishing in a tank is no proof of ownership in the tank.

ERTOZAH HOSSEIN v. HUREE PERSHAD SINGH . 5 W. R., 281

FISHERY, RIGHT OF—continued.

5. ———— **Right in the soil.**—*“Interest in land.”*—*Road Cess Act (Beng. Act X of 1871).*—A jalkar does not impart any interest in the soil itself and therefore a patni of a jalkar is not an “interest in land” within the meaning of the definition in the District Road Cess Act. DAVID v. GRISH CHUNDER GUHA . I. L. R., 9 Cal., 183: 11 C. L. R., 305

6. ———— **Settlement of jalkar.**—There is no such broad proposition of law, as that the settlement of a jalkar implies no right in the soil. RAKHAL CHURN MUNDUL v. WATSON & Co. I. L. R., 10 Cal., 50

7. ———— **Jalkar drying up.**
—*Right of holder of jalkar.*—When a jalkar dries up, the dried land does not, as a matter of course, become the right of the holder of the jalkar. BISSEN LALL DOSS v. KHYRUNISSA BEGUM . 1 W. R., 79

8. ———— **Drying up of jhil.**—By pottah certain land was leased, and a right of jalkar or fishery in a bhil or lake was granted, on payment of certain jumma. The bhil became permanently dried up. Held that the grant being merely of the fishery, the lessee acquired no interest in the soil, and the lessor was entitled to re-enter on the land formerly covered with the water of the bhil. SUBOOF CHUNDER MOZOOMDAR v. JARDINE, SKINNER & Co. . Marsh., 334: 2 Hay, 468

9. ———— **Change in course of river.**—*Right of owner of soil.*—If a river merely changes its course, the old dry course of the river must be taken to have become private property; and as incident to and part of the same, the owner of the soil is entitled to all bails or ponds, gulfs or damoorees, in which water remains, but which do not communicate with the river except in the time of floods, and he can claim a settlement with the Government in respect of any jalkar in the same. GRAY v. ANUNDMOHUN MOITHEO . . . W. R., 1864, 108

10. ———— **Joint right of fishery.**—A co-proprietor cannot be sued for trespass for fishing in a jalkar in which he and the other proprietors were entitled to fish, merely because the jalkar, by a change in the course of the river, ran over the land which was allotted to the plaintiff under a butwarra. In such a suit the plaintiff cannot obtain a share of the fish on the ground that he had a share in the jalkar. GOBIND CHUNDER SEHAHA v. ARDOOL GUNNY 6 W. R., 41

11. ———— **Drying up of river.**—*Land accreting subject to right of fishery.*—In a suit to establish a right of fishery in a river, where the right was not opposed and the plaintiffs obtained a decree, the lower Appellate Court, which also found that the disputed body of water south of the river occupied what was once its bed and was connected with the river by a narrow inlet, reversed the decree on the ground that it was possible this communication might silt up later in the year. Held that the lower Appellate Court's decision was wrong in law, and that, on the finding, the plaintiffs were entitled to a decree. Held also that if the flowing stream dried up, and the defendants acquired a right to the land by the

FISHERY, RIGHT OF.—Drying up of river—continued.

law of accretion, that right would be subject to the exercise by the plaintiffs of their prior right of fishery. **KALBE SOONDUR ROY v. DWARKANATH MOJOMDAR** 18 W. R., 460

12. ————— Diversion of flow of stream.

—Increase and decrease in flow of water.—It matters not whence the water in which A. has a right of fishery comes. A.'s right is not lessened, nor B.'s increased, because a portion of the water formerly flowing in A.'s channel has been diverted from it, and because the water of B.'s river now flows through it. **NORIN CHUNDER ROY CHOWDERY v. RADHA PRABEE DEBIA** 6 W. R., 17

13. ————— Rights of jalkar in flooded lands.

The gradual flooding of a talook may destroy the talookdar's right of ownership in that portion of it which is so covered with water, and vest the rights of fishery therein in the owner of the adjoining jalkar. But if by a sudden irruption of the river a definite and ascertainable area is submerged at once, that area does not become lost to the talookdar, nor does the owner of the adjoining jalkar become entitled to extend his fishery rights over it. **SIBESURY DABEE v. LUKHY DABEE** 1 W. R., 89

14. ————— Restriction on fishery rights by owners of bed of river.—Limiting area of water.

The owners of the bed of a river when dry are not entitled so to use that bed as to injure the jalkar rights which others have in it when full, by restricting the area over which the water may flow. **SHIKANT BHUTTACHARJI v. KEDAR NATH MOOKERJEE** 6 C. L. R., 242

15. ————— Interference with right.—Erection of bund.

A. has no right to erect a bund on his own land, so as to intercept the passage of fish in a natural stream, and thereby render B.'s right of fishery less profitable. But if the bund has existed for many years without complaint, B.'s right of fishery must be deemed subject to A.'s right to keep up the bund. **RAM DASS SURMAH v. SOWATUN GOOHOO** [W. R., 1864, 275]

16. ————— Jalkar rights in pergunnah.

—Right of owner of pergunnah.—A proprietor of the entire jalkar rights of a pergunnah is entitled to fish in any natural water-course, or any jhil or pond not made by human agency. **KHOORONAMOYE CHOWDERAIN v. JOY SUNKER CHOWDERY** [W. R., 1864, 267]

17. ————— Presumption of right of fishery from long possession of tank.

Where a person is found to have been from old in possession of a tank, it may be presumed that he is entitled to the fish therein, although there be no actual proof that he has asserted his property in the fish by fishing. **HUR PRESHAD ROY v. BADREN NARAIN GIR** [1 N. W., 14]

18. ————— Exercise of right of fishery from permanent settlement.—Open channels in river.

A party owning the right of fishery in a river from the time of the permanent settlement is at

FISHERY, RIGHT OF.—Exercise of right of fishery from permanent settlement—continued.

liberty to exercise that right in the open channels and also in all closing or closed channels abandoned by the river up to the time when the channels become finally closed at both ends, i.e., so long as fish can pass to and fro. **KRISHNENDRO CHOWDERY v. SUBNOMOYI** 21 W. R., 27

19. ————— Adverse right of.—Exercise of right of fishery.—Right to possession.

When a person exercises the right of fishing in a tank adversely for twelve years, his right to fish becomes absolute and indefeasible. **LUCKHIMONY DASSEE v. KORUNA KANT MOITRO** 3 C. L. R., 509

20. ————— Dispute as to fishery rights.

—Possession.—Title.—In a dispute about jalkars between the proprietors of a neighbouring estate, where the title-deeds of the two parties do not specially mention the particular pieces of land or water in contest, the title of the parties must depend on the fact as to which of them has been in possession. **SHAMA SOONDURIE DEBIA v. COLLECTOR OF MALDAH** 12 W. R., 164

21. ————— Right of fishery in navigable river, Proof of.—Private against public right.

When the exclusive jalkar right in a navigable river is set up against the ordinary rights of the State and the community it must be established by clear and strong proof. **BAGRAM v. COLLECTOR OF BHULLOOA. COLLECTOR OF RUNGPORE v. RAMJADUB SHIN** W. R., 1864, 243

22. ————— Right of fishery in navigable river.

The right of fishing in a navigable river does not belong to the public, nor is the Government prohibited by any law from granting to individuals the exclusive right of fishing in such a river. **CHUNDER JALNAH v. RAM CHURN MOOKERJEE** 15 W. R., 219

23. ————— Right of Government.—Semble.

The Government may have an exclusive right of fishery in a navigable river. **ACHUMBIT JHA v. JINWUN** 11 C. L. R., 11

24. ————— Jalkar.—Private and public rights.

A private right of fishery in a tidal navigable river must, if it exists at all, be derived from the Crown, and established by very clear evidence, as the presumption is against any such private right. *Quare.*—Whether such right can be created at all. A mere recital in quinquennial papers that a person is the owner of jalkar rights in a zemindari permanently settled with him by Government, is not sufficient to give to such person a right of fishery in a public navigable river; any right granted under such word "jalkar" would be perfectly satisfied if construed to apply exclusively to a right to fish within enclosed water, such as a jhil. **PROSUNNO COOMAR SINGAR v. RAM COOMAR PAROOFY** [1 L. R., 4 Calc., 53]

25. ————— Right of fishery in tidal river.—Prescription.

The right of the public to

FISHERY, RIGHT OF.—Right of fishery in tidal river—continued.

fish in tidal waters in British India may be curtailed by an exclusive privilege acquired by grant or prescription by certain persons within certain limits. Such an exclusive privilege being an infringement of the general rights of the public, could be acquired by a period of enjoyment which would suffice for the acquisition of an easement against the Crown. *VIRESA v. TATAYYA* . . . I. L. R., 8 Mad., 467

26. ——— Right of fishery in tidal navigable river.—Grant of rights by Crown.—Grant, where there is no title by prescription, must be proved.—Evidence as to nature and extent of grant.—The exclusive right of fishery in tidal navigable rivers may be granted by the Crown to private individuals. Such a right must ordinarily be proved either by proof of a direct grant from the Crown, or by prescription. In the absence of title by grant or prescription in persons alleging themselves to be the holders of a jalkar under an ijara, the mere payment of rent by fishermen to former ijaradars does not estop such fishermen from disputing the rights of the alleged holders; but such payment for the use of the jalkar right is strong evidence of the rights of the alleged holders of the ijara, and of acquiescence in their title. In the case of a grant of a jalkar, in ascertaining what the boundaries of the jalkar are, or what rights of fishery are contained within those boundaries, whether the subject of the grant be in tidal navigable rivers or not, the Courts should be guided by the same rules of evidence as would be applicable for the purpose of determining the nature and extent of any other grant. *PER PRINSEP and PIGOT, JJ.*—Unless the boundaries given in a grant of a jalkar clearly indicate to the contrary, a grant of a jalkar would not ordinarily include the right of fishery in tidal navigable rivers. *HORI DAS MAL v. MAHOMED JAKI* [I. L. R., 11 Cal., 494

27. ——— Right of fishing in the sea.—Right of suit.—Right of the Crown.—Public rights.—Rights of the Crown and of the public in the waters and the subjacent soil of the sea discussed. The right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. That right may, in certain portions of the sea, be regulated by local custom. Members of the public, exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and not so as to impede others from doing the same; and conduct which prevents another from a fair exercise of his equal right, if special injury thereby results to him, is actionable. *BABAN MAYACHA v. NAGU SHRAVUCHA* . . . I. L. R., 2 Bom., 19

28. ——— Adjunct of right of fishery.—Right of ferry.—A right to the jalkar of a river—that is, right to the produce of the water, such as fish, &c.—does not necessarily carry with it a right of ferry. *GOPPEE THAKOORAN v. SANO SEYUK MISSE* [5 N. W., 95

'FORDABLE RIVER,' MEANING OF—

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHURCHES OR ISLANDS IN NAVIGABLE RIVERS . 6 B. L. R., 343
[3 W. R., 95, 219
6 W. R., 123
7 W. R., 513

FORECLOSURE.

See CASES UNDER MORTGAGE—FORECLOSURE.

FORECLOSURE, MONEY PAID TO STAY—

See ATTACHMENT—ALIENATION DURING ATTACHMENT . 4 B. L. R., A. C., 24

FORECLOSURE, NOTICE OF—

See CASES UNDER MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

FORECLOSURE, SUIT FOR—

See JURISDICTION—SUITS FOR LAND—FORECLOSURE . I. L. R., 4 Cal., 283

See CASES UNDER MORTGAGE—FORECLOSURE.

FOREIGN COURT, JURISDICTION OF—

See FOREIGN JUDGMENT.

[I. L. R., 2 Mad., 400, 407

Contract, Suit on.—Making of contract.—Cause of action.—*A.*, a Hindu British subject, neither domiciled, resident, nor possessing property in the foreign State of Pudukotta, casually resorted thither and there drew a bill for a sum found due to his creditor *B.*, resident in that State. *B.* sued *A.* on this bill in the Civil Court of Pudukotta and got a decree in his favour. *B.* then sued *A.* in the Subordinate Court of Madura for enforcement of this decree. *A.* pleaded that the Pudukotta Court had no jurisdiction to pass the decree sued on, and that he had had no notice of the suit. It was found, on regular appeal, that *A.* had had notice, and decided that the Pudukotta Court had jurisdiction. *Held*, on special appeal, that the Civil Court of Pudukotta had no jurisdiction to try the suit. That the mere making of a contract within the jurisdiction of a foreign Court does not necessarily render that Court competent to adjudicate upon all the obligatory relations which flow directly or indirectly from it. *MATHAPPA v. CHELLAPPA* . I. L. R., 1 Mad., 198

FOREIGN JUDGMENT.

See COMPANY—WINDING UP—GENERAL CASES . . . 8 Bom., O. C., 200:
I. L. R., 9 Bom., 346

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT.
[I. L. R., 7 Cal., 82

FOREIGN JUDGMENT—continued.

1. ———— **Execution of decree of foreign Court.—Objections to foreign judgments.**—The rule in the case of foreign judgments sought to be executed in our Courts is, that such judgments must finally determine the points in dispute, and must be adjudications upon the actual merits, and that they are not open to impeachment on the ground of want of jurisdiction, whether over the cause, the subject-matter, or the parties, or that the defendant was not summoned, or had no opportunity of defence, or that the judgment was fraudulently obtained. **SREEHURSH BUKSH v. GOPAULCHUNDER SAMUNT** [15 W. R., 500]

2. ———— **Suit against person in representative capacity.**—The plaintiff obtained a judgment in a French Court against the father (now deceased) of the defendant. Plaintiff sued defendant on that judgment as representative of his father in the French Court. The defendant pleaded that the bond on which that judgment was obtained was not genuine. Judgment was given for the plaintiff in the French Court with costs. The plaintiff brought the present suit on that judgment. The lower Appellate Court decreed for the plaintiff against the defendant personally for the full amount of the decree in the French Court and interest. *Held* that the defendant was bound by the judgment in the French Court against him as representative of his father and personally bound to pay all costs awarded against him; but that, in giving effect to the French judgment, it was to be executed according to the rules of the Civil Procedure Code, which, in the absence of proof of assets received by a representative of a deceased, only gives a decree against the defendant as representative to be levied from the assets of the deceased. **KANDASAMI PILLAI v. MOIDIN SAIB** [I. L. R., 2 Mad., 337]

3. ———— **Suit on foreign judgment.—Native Courts, Suit on decree of.—Suits in India on judgments of Courts in India.—Jurisdiction of Small Cause Court.—Civil Procedure Code (Act X of 1877), s. 434.**—No suit is maintainable in any Court in British India founded upon the judgment of a Court situate in a Native State. The Courts of British India cannot enforce the decrees of any Native Courts, except as provided by section 434 of the Civil Procedure Code, Act X of 1877. Under that section the decrees of certain Native Courts may be executed in British India, as if they had been made by the Courts of British India. A suit will not lie in the Courts of India upon the judgment of any Court in British India. The only exception to this rule is in the case of judgments of a Court of Small Causes on which suits are permitted to be brought in the High Court in order to obtain execution against immoveable property. A foreign judgment creates an obligation belonging to the class of implied contracts. A Court which entertains a suit on a foreign judgment cannot institute an enquiry into the merits of the original action or the propriety of the decision. *Quare*.—Whether suits on foreign judgments are maintainable in the Civil Courts of India. **BHAVANISHANKAR SHEVAKRAM v. PURSADRI KALIDAS** [I. L. R., 6 Bom., 292]

FOREIGN JUDGMENT.—Suit on foreign judgment—continued.

4. ———— **Judgment of Court of Native State.—Jurisdiction of Civil Court.**—The Civil Courts of British India have jurisdiction to entertain suits brought upon the judgments of Courts of Native States. **BHAVANISHANKAR SHEVAKRAM v. PURSADRI KALIDAS**, I. L. R., 6 Bom., 292, dissented from. **SAMA RAYAR v. ANNAMALAI CHETTI** [I. L. R., 7 Mad., 164]

5. ———— **Parties.—Members of firm not resident in place where judgment was obtained.**—A. obtained a decree against B. and C. in Ceylon, and having realised a portion of the sum decreed by sale of property in Ceylon, instituted a suit for the balance upon the foreign judgment in British India against B., C., D., E., F., G., on the ground that all were members of one firm. *Held* that the suit would not lie against D., E., F., G., upon the foreign judgment. **LAKSHMANAN v. KARUPPAN** [I. L. R., 6 Mad., 273]

6. ———— **Native State.—Cause of action.—Jurisdiction.—Objection to jurisdiction on appeal.**—K. sued C., who resided in British India, upon a bond executed by C. in favour of K. within the territory of P., a Native State, and obtained a decree. Having obtained satisfaction in part, K. sued C. upon the judgment of the Court of P. in a British Indian Court at T. *Held*, reversing the decrees of the lower Courts, that the Court at P. had jurisdiction, and that K. could sue upon the judgment of that Court in the Court at T. **KALIYUGAM CHETTI v. CHOKALINGA PILLAI** [I. L. R., 7 Mad., 105]

7. ———— **Limitation.—Cause of action.—Act XIV of 1859.**—In a suit brought upon a judgment in the French Court at Chandernagore, *Held* that the period of limitation must be reckoned from the day on which the French decree was dated, and therefore in all Courts to which Act XIV of 1859 applied, such suit would be barred at the expiration of six years from that date. **HERRAMONEE DOSSEE v. PROMOTHONATH GHOSH** [2 Ind. Jur., N. S., 233; 8 W. R., 32]

8. ———— **Limitation.—Cause of action.**—The remedy by suit in a foreign Court continues open for the period prescribed by the law of that Court, without reference to our own Law of Limitation of suits. A foreign judgment is conclusive as between the parties when it cannot be questioned upon the ground of fraud, or want of jurisdiction, or that it was unduly obtained. Suits on foreign judgments may be maintained within "six years from the time the cause of action (the judgment) arose." **BOLORAM GOOY v. KAMEENEE DOSSEE** [4 W. R., 108]

9. ———— **Effect of foreign judgment.—Objection to jurisdiction, Waiver of.—Limitation Acts, 1871, s. 29, 1877, s. 28.**—Where a defendant sued in a foreign tribunal takes no exception to the jurisdiction, he cannot question the jurisdiction afterwards, inasmuch as he has led the plaintiff to believe that the proceedings are allowed by him to be

FOREIGN JUDGMENT.—Effect of foreign judgment—continued.

effectual, and encouraged the plaintiff to proceed in them instead of withdrawing from them and instituting proceedings elsewhere. Irregularity of procedure on the part of a foreign tribunal, which ordinarily proceeds in accordance with recognised principles of judicial investigation, is not a sufficient ground for refusing to give effect to its judgment. Where limitation bars the remedy, but does not destroy the right, the judgment of a foreign tribunal is not open to the objection that the suit (on a contract) was barred by the Law of Limitation applicable in the country where the contract was made. *NALLATAMBI MUDALIAR v. PONNUSAMI PILLAI* . I. L. R., 2 Mad., 400

10. — *Objection to jurisdiction, Waiver of.—Cause of action.*—If a party sued in a foreign tribunal, which has no jurisdiction except by virtue of its own peculiar laws, protests against the assumption of jurisdiction by that tribunal, but defends the suit to escape the inconvenience of being made liable to arrest and attachment of property in foreign territory, and appeals from the adverse decision of such tribunal to a foreign appellate tribunal without repeating his objection to the jurisdiction, his submission to the jurisdiction is not voluntary, and the judgment of the foreign tribunal does not constitute a valid cause of action in a Court of British India. *PAREY & Co. v. APPASAMI PILLAI*

[I. L. R., 2 Mad., 407]

FOREIGN STATE.

— *Civil Procedure Code, 1882, s. 431, cl. (b).*—*Cherrapoonjee Raj.*—*Public and private rights.*—*Succession to land in India.*—*Intestate succession.*—*Succession Act, Act X of 1865, s. 5.*—The “private rights” spoken of in section 431 (clause b) of the Code of Civil Procedure do not mean individual rights as opposed to those of the body politic or State, but those private rights of the State which must be enforced in a Court of Justice, as distinguished from its political or territorial rights, which must from their very nature be made the subject of arrangement between one State and another. They are rights which may be enforced by a foreign State against private individuals as distinguished from rights which one State in its political capacity may have as against another State in its political capacity. *Emperor of Austria v. Day*, 80 L. J. Ch., 690; 2 Giff., 628; *United States of America v. Wagner*, L. R., 2, Ch. App., 582, approved of. There is nothing to prevent a foreign or feudatory State from holding immovable property in British India, and to such property the rule of intestate succession laid down in section 5 of the Succession Act (Act X of 1865) does not apply. The State must be regarded as a *quasi* corporation which continues to exist as a State so long as it is recognised as such by Her Majesty, whatever the rule of succession to it may be and whatever may be its form of government. Case in which it was found on the facts that certain immovable property situated in British India, which had formerly belonged to the State of Cherrapoonjee, having been granted by a former Raja of that State to the defendant, was still the property of the State, on the ground that the Raja was not competent to alienate it, and that the de-

FOREIGN STATE.—Civil Procedure Code, 1882, s. 431 (cl. b)—continued.

defendant's plea of adverse possession and limitation was not supported by the evidence. *HAJON MANICK v. BUR SINGH* . I. L. R., 11 Cal., 17

FOREIGN TERRITORY, OFFENCE COMMITTED IN—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[I. L. R., 5 Mad., 22]

See CASES UNDER JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT.

FOREST ACTS.

See MADRAS FOREST ACT, 1882.

(VII OF 1865).

— *Wrongfully cutting timber.—Liability of Government for expense of carriage of such timber.*—Where timber had been cut and sold by a person who had no authority to do so, and was confiscated by Government under Act VII of 1865,—*Held* that Government was justly liable for the expense of conveying the timber from the place where it was lying, but was not equitably chargeable with the expense of cutting the timber, which was a wrongful act. *DEPUTY COMMISSIONER OF NOWGONG v. NOTHERAM BHUAYA* . 21 W. R., 436

(VII OF 1878), ss. 54, 58.

— *Offence under Act.—Order confiscating produce.*—No order confiscating forest produce which is the property of Government in respect of which a forest offence has been committed is necessary or can be made. All that need be done is to direct a forest officer to take charge of such forest produce. An order directing the confiscation of forest produce not belonging to Government, in respect of which a forest offence has been committed, can only be made at the time the offender is convicted. *EMPERESS v. NATHU KHAN*

[I. L. R., 4 All., 417]

s. 59.

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 4 All., 417]

s. 172.

See PENAL CODE, s. 182.

[I. L. R., 10 Bom., 124]

FOREST RIGHTS.

See KHOTI TENURE.

[I. L. R., 4 Bom., 264]

FORFEITURE OF INHERITANCE.

See CASES UNDER HINDU LAW—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF INHERITANCE.

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION.

FORFEITURE OF PROPERTY.*See* ABSCONDING OFFENDER.

[9 B. L. R., 342
10 B. L. R., Ap., 14
4 Mad., Ap., 48
6 W. R., Cr., 73, 79
3 W. R., Cr., 84, 68]

See ACT OF STATE . 12 B. L. R., 167*See* HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

[I. L. R., 1 Bom., 559]

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION.*See* HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 1 All., 503*See* MEANS PROFITS—RIGHT TO AND LIABILITY FOR— . 2 Agra, Mis., 6

1. ———— *Confiscation.—Absconding of fender.—Beng. Reg. XI of 1796, Sale under.—Construction of Regulation.*—Regulation XI of 1796, being a highly penal statute, should be construed strictly. As it makes no express provision for the case of joint proprietors of land, or persons jointly holding a sudder farm of land, in the absence of clear words indicating such an intention, it cannot be assumed that the Legislature intended to authorise the confiscation of the property of any person other than the delinquent. A sale under Regulation XI of 1796 does not extinguish under-tenures or incumbrances created by the delinquent or those through whom he claims. *JUGGOMOHUN BUKAHN v. ROY MOTHOORANATH CHOWDHRY*
[7 W. R., P. C., 18: 11 Moore's I. A., 223]

2. ———— *Beng. Reg. XI of 1796.—Forfeiture against some members of joint Hindu family.*—Under Regulation XI of 1796, the Governor General in Council could pronounce an order of confiscation in cases of persons charged with offences of a criminal nature who should abscond or conceal themselves so as not to be found upon process issued against them. After the issuing of the attachment by the Court and the subsequent declaration of forfeiture, everything previous to the attachment must be presumed to have been regularly and legally done, unless such presumption were rebutted by sufficient evidence. Where a forfeiture under Regulation XI of 1796 was declared against three or four brothers constituting a joint undivided Hindu family, —Held that the forfeiture did not enure for the benefit of the fourth brother, nor did it affect the rights of the fourth brother, who was entitled to his fourth share in all the ancestral property of the family, and that the widow of the ancestor was also entitled to maintenance. *GOLAB KOONWAR v. COLLECTOR OF BENARES*
[7 W. R., P. C., 47: 4 Moore's I. A., 246]

3. ———— *Seizure and attachment under Act XXV of 1857 and IX of 1859.—Confiscation of rebel's property.*—The procedure in regard to the seizure and attachment of property under Act XXV of 1857, and the adjudication of claims to

FORFEITURE OF PROPERTY.—Confiscation—continued.

such property under Act IX of 1859, pointed out. *Held* that it is not incumbent on a party aggrieved by acts done under these laws to bring a suit at all; but if he brings a suit, it must be brought within a year of the attachment or seizure complained of. A seizure within the meaning of section 20, Act IX of 1859, is such a taking possession of the property forfeited as is referred to in section 7, Act XXV of 1857, not merely formal but actual. *BYJNATH SINGH v. SOLANO* . . . 14 W. R., 114

4. ———— *Attachment against forfeited property.—Act XXV of 1857.—Priority to Government.*—Judgment-creditors having *bona fide* attachments upon property at the time that the property of their debtors become forfeited to Government under Act XXV of 1857, are entitled in priority to Government. *OODIT DASS v. GOVERNMENT*
[Marah., 259: 2 Hay, 117]

5. ———— *Right of decree-holder.*—A decree-holder is not entitled to have his decree satisfied by sale of the judgment-debtor's properties which have been confiscated by Government for rebellion, unless he can show that they were attached in execution of his decree before the confiscation. An attachment cannot be presumed to have existed or continued from the fact that there was a proclamation of sale before confiscation. *RADHA BISEE v. GOVERNMENT* . . . 2 Hay, 662

6. ———— *Withholding of payment of annuity.—Act IX of 1859, s. 18.*—Plaintiff joined with the rebels and took a leading part with them. A reward was set upon him as a rebel leader, and after a time he was captured. No formal proceedings were taken under sections 2 and 7 of Act XXV of 1857 for adjudicating his property (which consisted of little more than an annuity) to be forfeited. The property charged with the annuity was in the hands of the Collector as the manager under the Court of Wards. The annuity was withheld, and was no longer regarded as a charge on the estate, but was treated as merged. *Held* that the mere withdrawal of the payment of annuity by those who had the management of the estate, which was charged with the payment, would be an illegal act in no way affecting the plaintiff's right; but as the withholding of the payment was under the authority and direction of the official who was authorised to make attachment of rebels' property, it was with reference to the nature of the property equivalent to an attachment or seizure, and could not be questioned except under the provisions of section 18 of Act IX of 1859, notwithstanding there had been no adjudication of forfeiture. *CHUNDA v. ROOF SINGH* . . . 3 Agra, 281

7. ———— *Forfeiture of share in joint Hindu family property.—Mitakshara law.—Act XXV of 1857, s. 8.—B. S., the father of the plaintiff, and in possession of immoveable property subject to the Mitakshara law, inherited from his ancestor, was, on the 10th December 1857, after proceedings taken under Act XXV of 1857, declared to be a*

FORFEITURE OF PROPERTY.—Forfeiture of share in joint Hindu family property—continued.

rebel, and it was ordered that all his property should be confiscated to Government. On the 16th April 1858, *B. S.* was arrested, and being tried and convicted on a charge of rebellion was sentenced to death. The sentence was carried out on the 21st April, and an order was made on that day for the confiscation of his property. In a suit instituted by the plaintiff to recover the property,—*Held* that *B. S.* had such an interest in it as made it the subject of forfeiture under section 3, Act XXV of 1857, and the plaintiff, therefore, did not, on the death of *B. S.*, become entitled to his estate. *THAKOOR KAPILNATH SAKH v. GOVERNMENT*

[18 B. L. R., 445 : 22 W. R., 17

8. ——— **Forfeiture of land subject to rent.—Act XXV of 1857.—Right to arrears of rent due at time of forfeiture.**—Where land forfeited to Government by a conviction of the owner of an offence within Act XXV of 1857 is subject to rent, the person entitled to the rent is not entitled to recover arrears due at the time of the forfeiture, either from the heirs of the owner or from the Government; but the Government is liable for the rent which may subsequently accrue. *NEELMONEY SINGH DEO v. GOVERNMENT. NEELMONEY SINGH DEO v. CHUTTERDHUN SINGH* . *Marsh.*, 308 : 2 Hay, 226

9. ——— **Queen's Proclamation, Effect of.—Conviction for rebellion.—Act XI of 1857, s. 1.—Remission of punishment.**—Where *N.* and *M.* were convicted of rebellion under Act XI of 1857, section 1, and sentenced, the former to be transported for life, and to have all his property confiscated, and the latter to have all his property confiscated, the sentence of confiscation was held to be absolute, and not to depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor General does not restore the property. The Government having left the property of the convicts in the hands of the Administrator General as administrator to the estate of the convicts' father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by virtue of the confiscation to other property of the convicts, the title to which was undisputed, it was held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of amnesty (November 1858), coming after the conviction and confiscation, had not the effect of re-vesting in the convicts the property confiscated. *Held* also that the property in question, being Government paper, was liable to confiscation; and lastly, that *N.'s* widow was not entitled to maintenance out of the property confiscated by the State. *GUNGA BAHN v. HOGG* . 2 Ind. Jur., N. S., 124

10. ——— **Retrospective effect of forfeiture after conviction.—Attachment in execution.—Act XI of 1857, s. 1.—Penal Code, s. 121.**—In execution of a decree against the defendant, the plaintiff, on 17th July 1871, attached certain property in Calcutta belonging to the defendant. On

FORFEITURE OF PROPERTY.—Retrospective effect of forfeiture after conviction—continued.

26th July 1871, the defendant was convicted under section 1 of Act XI of 1857, and also under section 121 of the Penal Code, of abetting the waging of war against the Queen, and sentenced to transportation for life and forfeiture of all his property. The offence for which he was convicted was committed in September 1861. *Held* that the forfeiture took effect from the date of the commission of the offence, and therefore any attachment subsequently made was invalid. *GANESHLALL v. AMIR KHAN*

[8 B. L. R., 83 : 17 W. R., 80

11. ——— **Effect of forfeiture.—Confiscation under Act X of 1858.**—The confiscation of a village under Act X of 1858 cancels the rights of the tenants, and the fact that they were permitted to retain their holding on rent and enjoy the produce of the trees for some years subsequent to the confiscation, does not revive the rights which are absolutely avoided by the confiscation. *TEKKUM SINGH v. DULLO* 2 Agra, 324

12. ——— **Act X of 1858.—Power of Government to cancel tenures and eject ryots.**—Act X of 1858 gave Government the power as to landed property acquired by confiscation thereunder (if it thought fit to exercise it) of ejecting ryots. As to under-tenures the words are of still stronger import. But it must be held rather to confer a power to cancel than absolutely and without act done to annul the tenures. *DOORGA PERSHAD v. ZORAWUR* 2 N. W., 75

13. ——— **Act X of 1858, s. 7.—Under-tenures.**—The Legislature did not intend to include in the term "under-tenures," in section 7 of Act X of 1858, the holdings of ryots, but employed that term in the sense in which it is commonly used in this part of India, as applying to tenures of a proprietary character inferior to the zemindari, but superior to the khashtakree tenure. Consequently such holdings were by that Act made voidable but not absolutely void. The power of avoiding such holdings expired with the Act. *BASIT ALI v. MAN SINGH* 2 N. W., 140

14. ——— **Procedure in forfeiture.—Criminal Procedure Code, 1861, ss. 131, 132.**—The procedure prescribed in sections 131 and 132 of Act XXV of 1861 must be followed before an order confiscating property is made. *BHABY SHAHA v. NUBBY KHAN* 9 W. R., Cr., 13

15. ——— **Evidence of forfeiture.—Order of confiscation.—Attachment, Evidence of.**—An order of confiscation, or an order sanctioning confiscation, is not equivalent to an actual confiscation by way of attachment or seizure. A list of confiscated houses is not by itself proof of actual attachment. *DEO KARUN v. MAHOMED ALI SHAH*

[3 N. W., 328

16. ——— **Power of Magistrate to seize property of convict.**—A Magistrate has no power

FORFEITURE OF PROPERTY.—Power of Magistrate to seize property of convict—continued.

to seize the property of a person convicted where he has not been directed to pay a fine. *ANONYMOUS*
[4 *Mad. Ap.*, 28

17. ——— Charges on forfeited property.—*Debts and liabilities*.—General debts and liabilities are not charges against property forfeited upon conviction of felony. *HURRY DOSS BANERJEE v. HOGE* . . . 1 *Ind. Jur.*, O. S., 86

18. ——— Offences for which forfeiture may be enforced.—*Penal Code, s. 62*.—Section 62 of the Penal Code, which provides for forfeiture of property of offenders, limits it to cases where the parties shall have been transported or sentenced to imprisonment for at least seven years. *QUEEN v. KRIPAMOYEE CHASSANEE*
[8 *W. R., Cr.*, 35

19. ——— *Penal Code, s. 62*.—Where a zemindar was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Sessions Judge, who added a sentence of forfeiture of the rents and profits of the prisoner's estates under section 62 of the Penal Code, the High Court set aside the sentence under section 62 as too severe. That sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances. *QUEEN v. MAHOMED AKIE alias TOTAH MEAH* . . . 12 *W. R., Cr.*, 17

20. ——— Sale of forfeited property.—*Conviction of sale.—Act of State.—Right of suit against Government*.—Where a sale of landed property, which has been executed by the Government, was made by Government without any restriction being attached to the original notice of sale, which stated that the highest bidder was to be the purchaser.—It was held that the Government could not, subsequent to the bid and the deposit of the earnest-money, impose any condition, but was bound to make over possession irrespective of the character of the highest bidder. In selling the property of rebels which it had confiscated, the Government does not perform an act of State, but stands in the situation of an individual selling his property by auction, and a suit may therefore be properly brought against the Government by the purchaser, if the Government refuses to give up possession or transfer the possession to another. *SHEO LALL BOHREE v. MAHOMED*
[18 *W. R., P. C.*, 4

21. ——— *Rights of auction purchaser*.—Rights acquired by a purchaser at auction from Government of the confiscated property of a rebel, cannot be defeated or lessened by any subsequent act of the Government. *ESHREE PRESHAD v. DEBEE CHURN* . . . 2 *N. W.*, 470

22. ——— Order for confiscation passed subsequently and not at time of conviction.—When a person has been tried and convicted in the Court of a Special Commissioner, an order of confiscation of his property should be made at the

FORFEITURE OF PROPERTY.—Order for confiscation passed subsequently and not at time of conviction—continued.

time of the trial, and not subsequently. *IZZUTTOOL-NISSA BENBEN v. HUSNA KOOUR*
[1 *N. W.*, 101: *Ed.* 1873, 151

23. ——— Order of confiscation by independent Chief.—*Cognizance by English Courts.—Proof of confiscation*.—Where the Chief of an independent State, exercising the sovereign power of that State within its territories, confiscates property within those territories, the confiscation must be respected by English Courts of Justice. The fact of such confiscation, if disputed, must be ascertained by the Court in the same manner as are all other facts which are in issue between the parties. *SHOAY ATT v. SHOAY DOANG* . . . 14 *W. R.*, 218

24. ——— Order of forfeiture, Irregularity in making.—*Criminal Procedure Code, 1861, s. 184*.—An order of forfeiture under section 184, Code of Criminal Procedure, if substantially legal, cannot be disturbed for an immaterial error of procedure. *BALJOO BOUL v. GUGUN MISSEER. QUEEN v. GUGUN MISSEER* . . . 8 *W. R., Cr.*, 61

FORFEITURE OF RECOGNIZANCES.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 1 *B. L. R., A. Cr.*, 1

See CASES UNDER RECOGNIZANCE TO KEEP PEACE—FORFEITURE OF RECOGNIZANCE.

FORFEITURE OF TENURE.

See CASES UNDER LANDLORD AND TENANT—ABANDONMENT OR RELINQUISHMENT OF TENURE.

See CASES UNDER LANDLORD AND TENANT—FORFEITURE.

Condition in lease for—

See BENGAL RENT ACT, 1869, s. 52 (ACT X OF 1859, s. 78).

[*B. L. R., Sup. Vol.*, 972
12 *B. L. R.*, 439

Relief against—

See CASES UNDER LANDLORD AND TENANT—FORFEITURE.

FORGERY.

See APPEAL IN CRIMINAL CASES—PROCEDURE . . . *B. L. R., Sup. Vol.*, 426

1. ——— Requisites for offence.—*Penal Code, s. 29.—False document*.—To constitute the offence of forgery, the simple making of a false document is sufficient. It is not necessary that the document should be published or made in the name of a really existing person. A writing which is not legal evidence of the matter expressed may yet be a document within the meaning of section 29 of the Penal Code, if the parties framing it believed it to be, and intended it to be, evidence of such matter. *QUEEN v. SHIFAAT ALI*
[2 *B. L. R., A. Cr.*, 12: 10 *W. R., Cr.*, 61

FORGERY—continued.

2. ———— **"Valuable security."**—*Settlement of accounts.*—*Penal Code, s. 30.*—A settlement of accounts in writing, though not signed by any person, is a "valuable security" within the definition of section 30 of the Penal Code. *EX PARTE KAPALAVAYA SARAYA* 2 Mad., 247

3. ———— *Copy of lease.*—*Penal Code, ss. 30, 467.*—A copy of a lease is not a valuable security within the meaning of section 30 of the Penal Code, and therefore a conviction under section 467 for fabricating such a document cannot be supported. *REG. v. KHUSAL HIRAMAN* [4 Bom., Cr., 23

4. ———— *Deed of divorce.*—*Penal Code, s. 30.*—A deed of divorce is a "valuable security" within the meaning of section 30 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within section 471 of that Code. *QUEEN v. AZIMOODDEEN* [11 W. R., Cr., 15

5. ———— *Penal Code, ss. 24, 25, 464, 467, 471.*—*Using as genuine a forged document with intent to defraud.*—*Sunnud conferring a title of dignity.*—The accused, in order to obtain a recognition from a settlement officer that they were entitled to the title of "Luskur," filed a sunnud before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under sections 471, 464 of the Penal Code. *Held* on appeal that even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the settlement officer that they were entitled to the dignity of "Luskur," and that this could not be said to constitute "an intention to defraud." A sunnud conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code. *JAN MAHOMED v. QUEEN-EMPERESS. WARIS MEAH v. QUEEN-EMPERESS* [I. L. R., 10 Cal., 584

6. ———— *Using forged document.*—*Copy of document, Production of.*—A person may be convicted of using as genuine a document which he knew to be forged, though he in the first instance produced only a copy of it. *QUEEN v. NUJUM ALI* [6 W. R., Cr., 41

7. ———— *Intention, Proof of.*—*Making false document.*—A conviction for forgery under the Penal Code cannot be had unless it is proved that the accused himself made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made. *QUEEN v. RAMGOPAL DEUR* 10 W. R., Cr., 7

8. ———— *False assertion of title.*—*Dishonest and fraudulent intent.*—A prosecutor in a case of forgery, in order to establish that a title has

FORGERY.—False assertion of title—continued.

been asserted with a fraudulent or dishonest intent, must show that the accused had no reasonable ground for asserting the title, and that accused asserted the title dishonestly or fraudulently in the sense in which these terms are used in the Penal Code. *QUEEN v. KISHEN PRESHAD* 2 N. W., 202

9. ———— *Attempting to use fabricated evidence.*—*Knowledge of forgery.*—*Intention to use fabricated evidence.*—Where a prisoner produced as evidence an account book, one page of which had been fraudulently abstracted and another substituted for it,—*Held* that he was not guilty of the offence of attempting to use, as genuine, fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered. *QUEEN v. MODHOOSOODUN SHAW* 7 W. R., Cr., 23

10. ———— *Intention to defraud.*—*Wrongful gain or wrongful loss.*—*Avoidance of litigation.*—*A. signed B.'s name to petitions presented by C. to the mamlatdar requesting his summary assistance, under Regulation XVII of 1827, for the recovery of rents from B.'s tenants. Held* that even if *A.* had no authority from *B.* to sign his name, and if *A.* wished to deceive the mamlatdar into the belief that it was *B.* himself who had signed the petitions, still, if there had been no intention to defraud anybody, or if no wrongful gain or wrongful loss could have been caused to *A.* or *B.*, *A.'s* act did not constitute forgery within the meaning of the Penal Code. Avoidance of litigation is no wrongful loss to Government. *REG. v. BHAVANISHANKAR* [11 Bom., 3

11. ———— *Intention to injure.*—*Penal Code, s. 463.*—To constitute the offence of forgery as defined by section 463 of the Penal Code, it is not sufficient to prove that in making the document in respect of which the offence is charged, the accused knew that the document might injure, but it must be proved that it was his intention that it should injure another. *FEDA HOSSAIN v. EMPRESS* [10 C. L. R., 184

12. ———— *Forgery of copy of document.*—*Penal Code, s. 463.*—The forgery of the copy of a document for the purpose of the same being used in evidence comes within the definition of forgery as contained in section 463 of the Penal Code. *ESSAN CHUNDER DUTT v. PRANNAUTH CHOWDREY* [W. R., F. B., 71: Marsh., 270: 2 Hay, 236

13. ———— *Unauthorised use of name as agent.*—*Signing vakalatnama in name of decree-holders.*—The signing of a vakalatnama in the name of co-decree-holders without their authority to do so, and delivering it to a vakeel, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of section 463 of the Penal Code. *QUEEN v. GYANER RAM* [6 W. R., Cr., 78

FORGERY—continued.

14. ———— **Antedating a document.**—*Penal Code, ss. 468, 464.*—Where a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI of 1867, filed stamp paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within section 468, and clause 1, section 464, of the Penal Code. *QUEEN v. SOOMMOY GHOSH* . . . 10 W. R., Cr., 23

15. ———— **Falsification of record in order to conceal negligence.**—*Fraud.*—*Penal Code (XLV of 1860), ss. 468, 464.*—Falsification of a record made in order to conceal a previous act of negligence not amounting to fraud, does not amount to forgery within the meaning of sections 468 and 464 of the Penal Code (Act XLV of 1860). *EMPERESS v. SHANKAR* . . . I. L. R., 4 Bom., 657

16. ———— **Falsification of book to conceal frauds committed.**—*Penal Code, ss. 468, 466.*—The subsequent falsification of a *roz-namcha* book kept in the office of a Deputy Inspector of Schools by the mohurrir in charge thereof, for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, held not to fall within the definition of forgery as given in the Penal Code. *QUEEN v. JAGESHUR PERSHAD* . . . 6 N. W., 56

17. ———— **Proof of deception.**—*Making false document.*—*Penal Code, s. 464.*—It must be proved that the accused practised deception, so as to prevent a person from knowing the nature of the document before the accused can be found guilty under section 464 of the Penal Code of making a false document. *QUEEN v. NUJENBUTOOLAH* [9 W. R., Cr., 20

18. ———— **False entries in account book.**—*Penal Code, s. 464.*—The prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been repaid to the prosecutor, which, in fact, had not been repaid. *Held* that the prisoner was guilty of forgery under section 464 of the Penal Code. *ANONYMOUS* . . . 1 Ind. Jur., N. S., 46

19. ———— **Ignorance of contents of document.**—*Penal Code, s. 464.*—*Absence of deception.*—Where the accused, a mohurrir in a registry office, was charged with making false endorsements of registration on the back of certain deeds, which endorsements were signed by the Registrar, it was held that, before he could be convicted of forgery under part 3, section 464, Penal Code, it must be shown that the Registrar, in consequence of deception practised upon him by the accused, did not know the contents of the document he was signing. *QUEEN v. DWARKANATH GHOSH* . . . 20 W. R., Cr., 49

20. ———— **Misrepresentation in document by false description.**—*Penal Code, s.*

FORGERY.—Misrepresentation in document by false description—continued.

464.—A misrepresentation by false description of one's position in life falls under the heading of cheating and not under that of forgery. Where, therefore, a document purported to have been signed by G. L. patwari, and it was said that it had been signed by G. L., but at a time when G. L. was not a patwari, it was held that the document was not a forgery within section 464, Penal Code. *JOY KURN SINGH v. MAN PATWOK* . . . 21 W. R., Cr., 41

21. ———— **Fabricating false evidence.**—*Penal Code, ss. 192 and 464.*—*Alteration of date of document.*—Where the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently," within clause 2, section 464 of the Penal Code, but fabricating false evidence within section 192. *IN RE EKRAB ALI. EMPRESS v. EKRAB ALI* . . . I. L. R., 6 Calo., 482

22. ———— **Altering office report to screen negligence.**—Where prisoner, to screen his own negligence, altered an office report, such conduct does not fall within the definition of forgery in the Penal Code. *QUEEN v. LAL GUMUL* [2 N. W., 11

23. ———— **Making false entries in account book with the intention of concealing criminal breach of trust.**—*Act XLV of 1860 (Penal Code), ss. 24, 26, 465.*—Where a clerk, who had committed criminal breach of trust, subsequently made false entries in an account book, with the intention of concealing such offence, *Held* that the making of such entries did not constitute the offence of forgery, and he had therefore been improperly convicted under section 465 of the Penal Code. *Queen v. Jageshur Pershad* (6 N. W., 56), and *Queen v. Lal Gumul* (2 N. W., 11), followed. *EMPERESS v. JUWANAND* . . . I. L. R., 5 All., 221

24. ———— **False entry in public record.**—*Penal Code, ss. 192, 465, 466.*—Section 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorised person with a view to make it appear that it was duly issued by a public officer. The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate, and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under section 465 of the Penal Code. *Held*, on appeal, that the accused ought properly to have been convicted under section 192 of the Code; the provisions of that section not being confined to false evidence to be used in judicial proceedings. *IN THE MATTER OF JUGGUN LALL* . . . 7 C. L. R., 356

FORGERY—continued.

25. ——— Document with illegible seal and signature.—*Using forged document.*—*Penal Code, ss. 466-471.*—A conviction may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon. *QUEEN v. PROSONNO BOSE*
[5 W. R., Cr., 96]

26. ——— Alteration of Collectorate chalan.—*Penal Code, s. 467.*—The fraudulent alteration of a Collectorate chalan is the forgery of a document as described in section 467 of the Penal Code. *QUEEN v. HURLISH CHUNDER BOSE*
[W. R., 1864, Cr., 22]

27. ——— Forging copy of document which is unavailable when forged.—*Penal Code, s. 467.*—The forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, would not authorise the delivery of moveable property, is not punishable under section 467 of the Penal Code. *REG. v. NARO GOPAL*
5 Bom., Cr., 56

28. ——— Falsification of document with intent to deceive.—*Penal Code, s. 463.*—*Held* that where a person's object was to deceive his employer by falsifying account books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under section 168 of forgery with intent to cheat, instead of under section 465 of simple forgery. *QUEEN v. BANESSUR BISWAS*
18 W. R., Cr., 46

29. ——— Fraudulent using of document as genuine.—*Penal Code, s. 471.*—There must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under section 471 of the Penal Code. *QUEEN v. JAHAR BUX*
8 W. R., Cr., 81

30. ——— Using document knowing it to be forged.—*Penal Code, s. 471.*—To support a conviction of the offence under section 471 of the Penal Code, there must be a using of a document by a person who knows or has reason to believe that it is forged. *QUEEN v. BHOLAY PRAMANICK*
[17 W. R., Cr., 32]

31. ——— False alteration of police diary.—*Penal Code, s. 471.*—The false alteration of a police diary by a head constable was held to fall under section 471 of the Penal Code, as the forgery of a document made by a public servant in his official capacity. *QUEEN v. RUGHOO BARICK*
[11 W. R., Cr., 44]

32. ——— Evidence of fraudulent use of document.—*Penal Code, s. 471.*—*Requisites for findings for conviction.*—Where the accused was charged under section 471 of the Penal Code with having, in a suit brought against him by the kamdar of his sister to recover possession of certain property acquired by her by right of inheritance from her father, fraudulently and dishonestly used a forged document as genuine, knowing or having reason to know it to be

FORGERY.—Evidence of fraudulent use of document—continued.

a forged document, and it appeared the accused was in possession of the property, and the document in question purported to be a deed of gift from his father,—*Held* it was not sufficient for the jury merely to decide on the evidence whether the document was a forgery, and whether the accused knew it was a forgery when he used it, but it was further necessary for the jury to decide whether the document had been used fraudulently and dishonestly. *KHOORSHED KAZI v. EMPRESS*
8 C. L. R., 542

33. ——— *Penal Code, ss. 464, 470, 471.*—*Using a "forged" document.*—*Using "false" evidence.*—*"Dishonestly."*—*"Fraudulently."*—*Act XLV of 1860, ss. 24, 25, 196.*—The vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to "forgery" within the meaning of section 463 of the Penal Code, nor could the deed after the alteration be designated a "forged document" as contemplated by section 470, the intention to cause wrongful loss or wrongful gain or to defraud being wanting; nor could it be said that in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under section 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under section 196 of that Code. *EMPRESS OF INDIA v. FATHER. I. L. R., 5 All, 217*

34. ——— Public servant framing incorrect record.—*Act XLV of 1860 (Penal Code), ss. 218, 463, 471.*—A public servant, in charge as such of certain documents, having been required to produce them, and being unable to do so, fabricated and produced similar documents, with the intention of screening himself from punishment. *Held* that such fabricated documents not being records or writings with the preparation of which such public servant as such was charged, he could not legally be convicted under section 218 of the Penal Code, nor, such documents not being forgeries, as they were not made with the intent specified in section 463, could he be legally convicted under section 471. *EMPRESS v. MAZHAR HUSSAIN. I. L. R., 5 All, 553*

35. ——— Unnecessary use of forged document.—*Penal Code, ss. 109, 471.*—*Fraudulent intention.*—Where a person, in the course of an action brought against him to gain possession of a property, uses a forged document for the purpose of supporting his title, though there may be no necessity for the use of it, such a user is clearly fraudulent. A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction: and such an intention is a necessary inference which the jury should be directed to draw, if they are satisfied that the accused has uttered a forged document as a true one,

FORGERY.—Unnecessary use of forged document—continued.

meaning it to be taken as such, and knowing it to be forged. **IN THE MATTER OF DHUNUM KAZER. EMPRESS v. DHUNUM KAZER.**

[I. L. R., 9 Calo., 53; 11 C. L. R., 169]

36. — Intention in fabricating documents.—Penal Code, s. 464.—Fraudulent and dishonest fabrication.—The accused, who was a copyist in the Subdivisional Office at B., applied for a clerkship then vacant in that office. An endorsement on his application, recommending him for the post and purporting to have been made by the Subdivisional Officer of B., was found to have been falsely made by the accused. The application was accompanied by a letter, also fabricated by the accused, purporting to be from the Collector to the Subdivisional Officer at B., informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Subdivisional Officer, having some suspicion as to the genuineness of this letter, wrote a demi-official letter to the Collector to ascertain whether he had really written it; and this being posted in the local post office the accused fabricated a third document, purporting to be a letter from the Subdivisional Officer to the Postmaster asking him to stop the despatch of the demi-official letter. The accused was charged with, and convicted in the Sessions Court of, the offence of forgery, under section 464 of the Penal Code, in respect of the three documents. *Held* the conviction was right with regard to the two first documents, but with regard to the third document it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of that section. **ABDUL HAMID v. QUEEN-EMPRESS** . . . I. L. R., 13 Calo., 349

37. — Penal Code, s. 465, and ss. 24 and 25.—“Dishonestly.”—“Fraudulently.”—A Treasury Accountant was convicted of offences under sections 218 and 465 of the Penal Code under the following circumstances: A sum of Rs500, which was in the Treasury and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then upon two occasions wrote reports to the effect that the Rs500 in question then stood at the payee's credit as a revenue deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the Treasury Officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-mohurrir, which, as originally drawn up, related to the sum of Rs500 already mentioned. The signature of the cheque by the Treasury Officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs500 to the Civil Court, as if it had been the first Rs500, and to the credit of the first payee's represent-

FORGERY.—Intention in fabricating documents—continued.

ative. The prisoner was convicted under section 465 of the Penal Code in respect of the cheque, and under section 218 in respect of the two reports above referred to. *Held*, with respect to the charge under section 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs500; that under these circumstances he could not be said to have acted “dishonestly” or “fraudulently” within the meaning of section 24 or section 25 of the Penal Code; and that therefore his guilt under section 465 had not been made out, and the conviction under that section must be set aside. **QUEEN-EMPRESS v. GIRDHARI LAL**

[I. L. R., 8 All., 653]

38. — Penal Code, ss. 24, 25, 471.—Fraudulently using as genuine a forged document.—“Dishonestly.”—“Fraudulently.”—The creditors of a police constable applied to the District Superintendent of Police that Rs2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order being passed directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for Rs18, the whole amount due. It subsequently appeared that the receipt was one for Rs8, which the debtor had altered by adding the figure “1,” so as to make it appear that the receipt was for Rs18. *Held* that the real intent in the prisoner's mind being to induce his superior officer to refrain from the illegal act of stopping a portion of his salary, the Court in a criminal case ought not to speculate as to some other intent over and above this that might have presented itself to him, that it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditor's claim, and that therefore he ought not to have been convicted of an offence under section 471 of the Penal Code. **QUEEN-EMPRESS v. HUSAIN** . I. L. R., 7 All., 403

39. — Penal Code, s. 471.—Act XLV of 1860, ss. 24, 25.—Fraudulently using as genuine a forged document.—“Dishonestly.”—“Fraudulently.”—In a trial upon a charge, under section 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent used by the prisoner had been fabricated in lieu of genuine receipts which had been lost. *Held* that, with reference to the definitions of the terms “dishonestly” and “fraudulently” in sections 24 and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under section 471. **QUEEN-EMPRESS v. SHRO DAXAL** . . . I. L. R., 7 All., 459

40. — Possession of counterfeit seals, &c.—Intention to commit forgery.—Penal Code, ss. 472, 473.—Counterfeit seals and forged documents were found in the prisoner's possession,

FORGERY.—Possession of counterfeit seals, &c.—continued.

and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently. *QUEEN v. KISTO SOONDER DEB*

[2 W. R., Cr., 5

41. ————— Penal Code, s.

473.—Intent to commit forgery.—Where several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that, under section 473 of the Penal Code, there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals in their possession were for the purpose of committing one particular forgery. *QUEEN v. GOLUCK CHUNDER*. 18 W. R., Cr., 16

42. ————— Attempt to commit forgery.

—Abetment of forgery.—To prepare, in conjunction with others, a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such false document, do not constitute forgery nor an attempt to commit forgery under the Penal Code, but are facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENKATASAMI*

[I. L. R., 3 Mad., 4

43. ————— Penal Code (Act

XLV of 1860), ss. 465 and 511.—A person cannot be convicted of an attempt to commit an offence under section 511 of the Penal Code, unless the offence would have been committed if the attempt charged had succeeded. A prisoner, who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed and the proof corrected by him; that the prisoner had had an intention of making such addition to the printed form as would make it a false document, and that he did this dishonestly and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under sections 465 and 411 of the Penal Code for attempting to commit forgery. *Held* that the conviction was wrong, and must be set aside. *IN THE MATTER OF THE PETITION OF RIASAT ALI, alias BABU MIYA, alias BODIUZZUMA. EMPRESS v. RIASAT ALI, alias BABU MIYA, alias BODIUZZUMA*

[I. L. R., 7 Cal., 352; 8 C. L. R., 572

FORM OF SUIT, CHANGE OF—

See CASES UNDER VARIANCE BETWEEN PLEADING AND PROOF.

“FORTHWITH,” MEANING OF—

See RULES OF SUPREME COURT, BOMBAY.

[8 Bom., O. C., 135

See SEQUESTRATION. 8 Bom., O. C., 135

FOUJDARI COURT, JURISDICTION OF—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NATURE AND EFFECT OF DECISION.

[3 W. R., P. C., 45; 7 Moore's I. A., 283

FRAUD.

Col.

1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD 2017
2. ALLEGING OR FLEADING ONE'S OWN FRAUD 2020
3. EFFECT OF FRAUD 2024

See BENGAL RENT ACT, 1839, s. 30.

[22 W. R., 306

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

[I. L. R., 7 Bom., 78

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

See CASES UNDER LIMITATION ACT, 1877, s. 18 (1871, s. 19).

See CASES UNDER LIMITATION ACT, 1877, ART. 95 (1871, ART. 95; 1859, s. 10).

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL IN CERTAIN CASES.

[*Bourke, A. O. C.*, 1: 2 Hyde, 289: Cor., 88

6 W. R., 252

I. L. R., 7 Cal., 199

16 W. R., 80

1 Hay, 461

See REGISTRATION ACT, 1877, s. 50 (1866, s. 50).

[4 R. L. R., A. C., 8: 12 W. R., 456

I. L. R., 5 Cal., 336

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

[I. L. R., 1 All., 548

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—OTHER GROUNDS.

[I. B. L. R., A. C., 84

16 W. R., 80

7 B. L. R., Ap., 1

2 W. R., Act X., 63

3 W. R., 333

14 W. R., 159

10 Moore's I. A., 540

17 W. R., 128

24 W. R., 260

7 W. R., 409

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[I. L. R., 5 Bom., 78

13 C. L. R., 1

I. L. R., 10 Cal., 63

23 W. R., 82

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—FRAUD.

See SPECIFIC RELIEF ACT, s. 9.

[I. L. R., 5 Bom., 446

FRAUD—continued.

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES. 22 W. R., 221

See CASES UNDER VENDOR AND PURCHASER—FRAUD.

See VENDOR AND PURCHASER—NOTICE.
[I. L. R., 1 Bom., 237]

See VENDOR AND PURCHASER—INVALID SALES . I. L. R., 5 Bom., 450
[7 W. R., 258
2 Agra, 201
I. L. R., 4 Bom., 70, 77
6 Moore's I. A., 27]

See WITHELDRAWAL OF SUIT.
[I. L. R., 10 Calc., 357]

————— Prevention of execution of decree by—

See CIVIL PROCEDURE CODE, 1882, s. 230.
[I. L. R., 9 Bom., 318]

————— Suit for goods obtained by—

See CONTRACT ACT, s. 178.
[I. L. R., 8 Calc., 264]

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—FRAUD.
[I. L. R., 3 Calc., 264]

————— Suit to recover money obtained by—

See LIMITATION ACT, 1877, ART. 62 (1871, ART. 60) . I. L. R., 2 Calc., 268

————— Suit to set aside sale on account of—

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD.

1. ————— Imputations of fraud.—Disposal of allegations of fraud.—Imputations of fraud should be disposed of at the hearing, and should not be left open to be disposed of by the master on the taking of accounts. *LALLBHAI VALLABHAI v. KAVASJI NANABHAI* . . . 8 Bom., O. C., 209

2. ————— Proof of fraud.—Presumption.—Fraud and dishonesty are not to be presumed on conjecture, however probable. *IMDAD ALI v. KOTHY BEGUM*
[6 W. R., P. C., 24: 3 Moore's I. A., 1]

3. ————— It is often the case that fraud cannot be established by positive proofs, and on the other hand it is not to be presumed from circumstances of mere suspicion. It is generally shown by such circumstantial evidence as overcomes the natural presumption of honesty and fair dealing, and satisfies a reasonable mind that such presumption has been displaced. *MATHURA PANDAY v. RAM RUCHA TEWARI*
[3 B. L. R., A. C., 108: 11 W. R., 462]

FRAUD—continued.

1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—continued.

Proof of fraud—continued.

4. ————— Suit to set aside bonds.—Mere speculation and probability will not in law support a finding of fraud. Where a party puts forward a charge of collusion with a view to defraud, it is incumbent on him to support it by evidence to a certain reasonable extent: *e.g.*, where a party admits that an instrument which on the face of it appears to deal with the property is written or signed by the owner of the property, he can only get rid of its effect by showing facts which would establish fraud in its inception, or show that it was not intended to be operative according to its purport. *RAJ NARAIN v. ROWSHUN MULL* . 22 W. R., 124
KUBERROODHUN v. JOGUL SHAHA . 25 W. R., 133

5. ————— Allegation of fraud and collusion.—Where a party alleges the fraud or collusion of the opposite party as a ground of relief, general allegations of it will not be sufficient, but the instances upon which such allegations are founded must be stated; as it is unreasonable to require the opposite party to meet a general charge of that nature without giving him a hint of the facts from which it is to be inferred. *JOOMNA PERSHAD SOOKOOL v. JOYRAM LALL MAHTO* . 2 C. L. R., 26

6. ————— Oral evidence.—Oral evidence of witnesses deposing in general terms is not sufficient to establish fraud on the part of a former putneedar in converting mal lands of the putnee in excess of 100 beeghas into rent-free lands, so as to entitle the present putneedar to resume them as invalid lakheraj. *SHIBSOONDUREE DEBIA v. MAHOMED ALI* . . . W. R., 1864, 137

7. ————— Suit by minor to recover share of consideration paid for lease.—Suit for the recovery of a minor's share of the consideration paid for a mauraai lease granted by the minor's co-proprietors on their own behalf and as his guardians, in order to raise money required for the expenses of the joint estate, which lease was cancelled (on the suit of the minor when he came of age) so far as his share was concerned. *Held* that the plaintiff was not entitled to recover without proof of fraud, and that the evidence tendered by the plaintiff (namely, the record of the case instituted by the minor for the cancelment of the lease) was not admissible to prove the allegation of fraud. *DOOMGA CHURN BRUTTA-CHARJEE v. SHOSHNE BROOSUN MITTER*
[5 W. R., S. C. C. Ref., 23]

8. ————— Fraudulent transaction.—Decree obtained after compromise of appeal.—A decree of an Appellate Court obtained after a compromise and an agreement not to prosecute the appeal, was held to be an adjudication obtained not only with great impropriety, but in effect by fraud. *RAJMOHUN GOSSAIN v. GOORMOHUN GOSSAIN*
[4 W. R., P. C., 47: 3 Moore's I. A., 91]

9. ————— Non-payment of debt.—The mere non-payment of a debt does not

FRAUD—continued.**1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—continued.****Fraudulent transaction—continued.**

necessarily prove collusion between the debtor and his vendor to defraud the creditor. Fraud must not be presumed without good and probable grounds.

KISHENDHUN SURMAH v. RAMDHUN CHATTERJEE

[6 W. R., 235]

10. ——— Taking benamias lease.—The mere taking a benamias lease, unaccompanied by any other circumstance of suspicion, does not *per se* constitute fraud. **MUNMOOLALL v. RHEE BHOOBUN SINGH** 6 W. R., 233

11. ——— Purchaser obtaining assent of beneficial as well as ostensible owner to make his title good.—There is no fraud in a purchaser securing the assent both of the ostensible and beneficial owners to his purchase, so as to acquire a good title. **KALSH MOHUN PAUL v. BHOLANATH CHAKRADAR** 7 W. R., 188

12. ——— Sale for arrears of rent.—Benamias purchase.—Act VIII of 1835.—Plaintiff sued for possession on a declaration of his itnamee right to a portion of a talook, for which his mother obtained an itnamee pottah. Afterwards the original superior tenure having been sold for arrears of rent under Act VIII of 1835, the father of defendant No. 1 purchased those rights and interests in the name of the defendant, and then obtained from the zemindar a pottah and settlement of the talook as one coming under the provisions of Regulation VIII of 1819. He then fell into arrears, the talook was sold under the Regulation last cited, and he purchased it benamias. *Held* that the legal inference from these facts was that the conduct of the father of the defendant No. 1 was fraudulent. **SOOBUL CHUNDRA PAUL v. ATTUR ALI**

[11 W. R., 32]

13. ——— Over-valuation of salt.—Proof of fraud.—A valuation of salt, based on the loss which the owner may possibly incur on account of the bonds in respect of the salt passed by him to the Government, though greatly in excess of the real value of the salt, is not such an over-valuation as amounts to proof of fraud. **HARIDAS PURSHOTAM v. GAMBLE**

[12 Bom., 23]

14. ——— Presumption of fraud.—Property left to endowment instead of for the support of the widows of the family.—The defendants having pleaded that certain Government paper, in which plaintiff claimed a share, had been appropriated, by a memorandum of agreement, to the service of an idol, and the agreement was substantiated by very strong evidence and shown to have been acted upon by all the parties for years, the Privy Council held that it could not be set aside, as a colourable transaction having no validity, merely upon the suggestion that the amount set aside was exorbitant, and that there might possibly have been an intention to defraud widows and others. **RADHA MOHUN MUNDUL v. JADDOMONEE DASSEE**

[23 W. R., 369]

FRAUD—continued.**1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—continued.****Fraudulent transaction—continued.**

15. ——— Mortgagee and mortgagee.—Constructive fraud.—Mere silence on the part of a prior mortgagee on hearing that the mortgagee is mortgaging the property a second time is not such conduct as will amount to constructive fraud, and deprive him of his right to priority as against the second mortgagee. Neither does the mere fact that, being aware of the second mortgage, he attests the execution of the mortgage-deed, amount to such conduct, where his knowledge of the contents of the deed is not shown. Where a prior mortgagee, however, attested the execution of the deed mortgaging the property a second time, and being aware of the contents of the deed, kept silence, and thus led the second mortgagee to think that the property was not encumbered, and to advance his money on the security of it, which the second mortgagee would not have done had he been aware of the existence of the prior mortgage, such silence was held to be conduct which amounted to constructive fraud on the part of the prior mortgagee and deprived him of his right to priority. **SALAMAT ALI v. BUDH SINGH**

[1 L. R., 1 All, 303]

2. ALLEGING OR PLEADING ONE'S OWN FRAUD.

16. ——— Pleading fraud.—Defrauded parties.—A party cannot allege or plead his own fraud, nor can his representatives, nor a private purchaser from him, do so, unless they are themselves the defrauded parties, and seek relief from the fraud. **LUCKEE NARAIN CHUCKREBUTTY v. TARAKMONEE DOSSEE** 3 W. R., 92

PURIKENT SAHOO v. RADHA KISHEN SAHOO

[3 W. R., 221]

ROWSHUN BEEBEE v. KUREEM BUKH

[4 W. R., 12]

BHOWANEE PERSHAD v. OHRUDUN . 5 W. R., 177

17. ——— Estoppel.—Party pleading fraud of ancestor.—The plaintiff, claiming through the heir of A., is not at liberty to plead the fraud of A. as against the defendant in possession, although he claims under the fraudulent conveyance. To allow him to do this would be to violate a well-known principle of law which does not allow a party to set up the fraud of the ancestor through whom he claims. **GHUREEB HOSSEIN CHOWDREY v. USEE-MOONNISSA KHATOON** 1 Hay, 528

18. ——— Succession to property.—Rectification of deeds made fraudulently by predecessor.—A party succeeding to the possession of the property is not entitled to ask the assistance of the Court either to rectify deeds of transfer fraudulently effected by his predecessor, or to ask that these documents should be treated as void in law. **GOPAL NARAIN alias JUGDEO NARAIN v. GUNGA PERSHAD SAHOO** 19 W. R., 270

FRAUD—continued.**2. ALLEGING OR PLEADING ONE'S OWN
FRAUD—continued.****Pleading fraud—continued.**

19. ————— *Son suing to regain property alienated fraudulently by father.*—A son cannot obtain a decree when suing as heir to regain property, alleging his father's fraud as the cause of action. **BRUGGEBUTTY DOSSEN v. KISHEN NATH ROY** **3 W. R., 30**

KALERNATH KUR v. DOYAL KRISTO DEB
[13 W. R., 37]

20. ————— *Pleading fraud of self or as representative.*—A party claiming through another is not at liberty to plead that other's fraud as against a defendant in possession who claims under the fraudulent conveyance. **FUREEDDOONISSA v. RUHOMUT** **4 W. R., 37**

21. ————— *Sale by lady to her mooktear without consideration.*—*Suit by transferees from mooktear.*—On the 25th July 1866 *M.* executed a kobala purporting to convey certain properties to *R.* (her mooktear), whose representative *X.*, by a deed dated 15th September 1867, conveyed a portion of the property to *Y.*, who claimed to be the prior purchaser for valuable consideration without notice. By deed dated 15th September 1867, *M.* conveyed the property to the respondents, who were in receipt of rents at the time when *X.* and *Y.* instituted suits to recover possession of the property and to set aside the deed, the ticcadar and *M.* being also made defendants. *Held* that the conveyance by the native lady to her mooktear without consideration could not be upheld, for to uphold it would be a denial of justice and contrary to sound policy, even if the grantor as plaintiff sued the mooktear as defendant to set it aside. Still less could it be upheld in a case like this, where the parties pleading the fraud were defendants and in possession. **LALLA HURRI LAL v. KOOLDREFF SINGH** **19 W. R., 144**

22. ————— *Person alleging his own fraud.*—*Benamies holding.*—Where property is held benamiee, and the ostensible owner assents to its being disposed of to the prejudice of the real owner, the latter cannot be allowed to object, the fraud being a consequence of his own act. **BRJONATH GHOSH v. KOTLASH CHUNDER BANERJEE**
[9 W. R., 593]

23. ————— *Conveyance of property for fraudulent purpose.*—*Plea of.*—Where a mother conveyed property to a daughter, and the property was afterwards attached in execution of a decree against the daughter, *Held* that the mother could not obtain a reconveyance of the property, on the ground that the conveyance to the daughter was for the purpose of defrauding the mother's creditors, and that the onus was on the mother to prove that the decree against the daughter was a fraudulent contrivance to deprive the mother of possession of the property. **KESHUB CHUNDER SEIN v. VYAS-MONER DOSIA** **7 W. R., 118**

FRAUD—continued.**2. ALLEGING OR PLEADING ONE'S OWN
FRAUD—continued.****Pleading fraud—continued.**

24. ————— *Fraud on creditors.*—*Right of widow to articles of property excluded from husband's schedule of insolvency.*—*Right of official assignee.*—A widow, as administratrix of her husband's estate, sued to recover certain articles of moveable property belonging to that estate, which had been wrongfully appropriated by her son. Defendant pleaded that if the articles belonged to his father's estate they had been fraudulently kept out of the father's schedule when the latter had passed through the Insolvent Court, and that the widow could not claim the property, as she would thereby be taking advantage of her husband's fraud. *Held* that as the official assignee refused to make any claim to the property in dispute, no third party was competent to set up a claim. The creditors had their remedy against the official assignee. The right of ownership was still vested in the plaintiff, notwithstanding the alleged fraud. **MANLY v. MANLY** . **14 W. R., 136**

25. ————— *Husband and wife.*—*Fraud on creditors.*—Where a wife had concluded with her husband to buy up a decree under which he and others were judgment-debtors, and the husband subsequently sought to establish his claim to the purchase, on the ground that it had really been made with his own money, and the wife pleaded that the husband's fraud had disqualified him, *Held* that, as the wife was a partner in the fraud, it gave her no advantage, and that the husband's claim should be recognised, also because it exposed the fraud and afforded the only means of doing justice to the other judgment-debtors. **SUFEROOLLA SIBOAR v. BRJUM BISEN** **25 W. R., 219**

26. ————— *Avoidance of fraudulent deed.*—*Deed of gift.*—*Res judicata.*—*Estoppel.*—A deed of gift, valid and operative between the parties thereto, cannot be avoided because in another suit between different parties it has been held to be fraudulent as against creditors. *Quere.*—Whether a donor can avoid his own deed on the ground of his own fraud. **RAMANUGHA NARAIN v. MANASUNDUR KUNWA** . **12 B. L. R., P. C., 433**

27. ————— *Defendant pleading joint fraud.*—*Voidable acts.*—A defendant may plead the joint fraud of himself and the plaintiff as a bar to an action upon a contract which the plaintiff seeks to enforce by suit. The distinction between acts voidable by statute and at common law discussed. **SESHAIA v. KANDAIYA** **2 Mad., 249**

SOOKHYA MEDHEE v. GUNDHORAM MUNDLE
[12 W. R., 264]

28. ————— *Suit seeking protection from fraud admitted by parties.*—A suit founded on an admission of fraud and seeking protection from the consequences of that fraud cannot be maintained. **ALOOKSOONDREY GOOPTO v. HORO LAL ROY** **6 W. R., 267**

FRAUD—continued.**2. ALLEGING OR PLEADING ONE'S OWN FRAUD—continued.****Pleading fraud—continued.**

29. ————— *Avoidance of deed fraudulently made.*—A person who has deliberately executed a deed by which his own property is bound is not at liberty to set up as a plea for evading obligation that he did so for the purpose of defrauding other people, but is bound by such deed. **KYLAKH CHUNDER MITTER v. DEBU MOHEN DASSIA**

[15 W. R., 273]

30. ————— *Avoidance of deed fraudulently made.*—*Possession.*—But where there was no transfer of possession under the deed, there is a *locus penitentis* and he is entitled to relief, the property being prejudicially affected by other acts. **LAIL MAHOMED v. FUREUTOONISSA**

[15 W. R., 312]

31. ————— *Setting up one's own fraud to invalidate deed.*—A party cannot set up his own fraud to invalidate a deed executed by him. **NAUTH SAHOY v. JUGDUM SAHOY** . 2 Hay, 499

32. ————— *Fraud of person through whom party claims.*—Where the agreement which formed the basis of a suit was found to have been entered into by the plaintiff and the defendant's ancestors in furtherance of a fraud, it was held that the defendant was at liberty to show what the real circumstances were under which the agreement was entered into, even though it disclosed the fraud of his own ancestor. **GOLAM KODDER CHOWDERY v. JOKORUNNISA KHATOON** . 19 W. R., 236

See SEENATH ROY v. BINDOO BASHINEE DEBIA 20 W. R., 112

33. ————— *Pleading one's own fraud.*—*Admission.*—*Estoppel.*—An act done by a party with a view to defeating a claim made against him does not estop him from disputing afterwards the validity of that act. Nor does a statement made by persons in a suit and intended as a fraud on a third party, amount to an estoppel as between them, or prevent either of them showing the real truth of the transaction. **See Phool Bibee v. Geor Suran Dass**, 18 W. R. 485; **Sreenath Roy v. Bindoo Bashinee Dabee**, 20 W. R., 112; **Bykunt Nath Sen v. Goboolah Sikdar**, 24 W. R., 39; **Debia Chowdhrain v. Binola Soondaree Debia**, 21 W. R., 422. **MUKIM MULLICK v. RAMJAN SIRDAR**

[9 C. L. R., 64]

34. ————— *Right to plead fraud.*—*Collusive decree.*—*Execution.*—*Suit to declare property liable to attachment in execution of a decree.*—*Plea that the decree was collusive.*—*Civil Procedure Code (Act XIV of 1882), s. 283.*—A. obtained a money decree against B., and, in execution, attached property in the possession of C., who claimed to have purchased it for value from B. previously to the date of the decree. The attachment was removed on the motion of C. A. then brought a suit against C. under section 283 of the Code of Civil Procedure (Act XIV of 1882), to have

FRAUD—continued.**2. ALLEGING OR PLEADING ONE'S OWN FRAUD—continued.****Pleading fraud—continued.**

it declared that the property was liable to attachment and sale under the decree. C. contended that the decree sought to be executed was a collusive one. **Held** that C. could not be allowed to impeach the decree between A. and B. **GULRAI v. JAGANNATH GALVANKAR** I. L. R., 10 Bom., 659

35. ————— *Fraudulent execution of document.*—*Showing real nature of transaction.*—Where a person who has executed a document (e.g., a kabuliat) for his own advantage under false pretences is sued upon it, he is not precluded from showing the real nature of the transaction. **ASHEUF SIRDAR v. BHUBO SOONDUREE**

[25 W. R., 40]

36. ————— *Evidence Act (I of 1873), s. 44.*—*Fraud and collusion.*—*Decree obtained by fraud and collusion between mortgagor and mortgagee, Effect of, on property in hands of purchaser subsequent to decree.*—A. mortgaged certain property to B., who instituted a suit on his mortgage and obtained a decree therein. Subsequently to such decree A. sold the property to a third party, C. B. having attempted to execute his decree against the property in the hands of C., the latter instituted a suit against A. and B. for the purpose of having it declared that the property was not liable to satisfy the decree because the mortgage transaction was a fraudulent one and the decree had been obtained by fraud and collusion. In such suit B. contended that C. having purchased subsequently to the decree was absolutely bound by it. **Held** that, having regard to the terms of section 44 of the Evidence Act, it was perfectly open to C. to prove that the decree had been obtained by fraud and collusion. **Bhownath Singh v. Rajendra Pratap Sahoy**, 5 B. L. R., 321; 13 W. R., 157, distinguished. **NILMONY MOOKHOPADHYA v. ARMUNISSA BIBEE**

[I. L. R., 12 Calc., 156]

3. EFFECT OF FRAUD.

37. ————— *Effect of fraud.*—*Fraudulent joint conveyance where one party really has an interest in the property.*—A declaration of title cannot be granted to the purchaser under a kobala from two parties where the conveyance has been found to be fraudulent and collusive, even though one of the parties really had an interest in the property, and transferred it in the same conveyance. The conveyance cannot be upheld in part, the effect of fraud being to make it wholly void. **ALTAMONTISSA BIBEE v. SAGE** 11 W. R., 335

38. ————— *Mortgage bond.*—*Subsequent substitution of property as security.*—*Purchaser, Right of.*—L. executed a bond in favour of S., in which he mortgaged, amongst other property, a village called Chand Khers, as security for the payment of certain money. Subsequently he sold the same village to A., concealing the fact of the mort-

FRAUD—continued.**8. EFFECT OF FRAUD—continued.****Effect of fraud—continued.**

gave to S. On this fact coming to A.'s knowledge he threatened L. with a criminal prosecution, whereupon L. proposed that a share in a village called Kelsa, which he alleged was his property, should be substituted for Chand Khara as security, and this proposal was accepted by S. It subsequently appeared that the share in Kelsa did not belong to L., and S. thereupon sued L. and A. on the bond, claiming to enforce a lien on Chand Khara. A. set up as a defence to the suit that S. had agreed to substitute Kelsa for Chand Khara in the bond, and produced S.'s letter as evidence of the agreement. *Held* that L.'s fraud vitiated S.'s agreement to substitute the security of Kelsa for the security of Chand Khara in the bond, and S. was entitled, notwithstanding A. might have purchased the latter property in good faith, to the enforcement of the lien created thereon by the bond. *SAFDAR ALI KHAN v. LACHMAN DAS* [I. L. R., 2 All., 554]

39. ———— Misrepresentation.—*Kabuliat.*—*Contract of Tenancy.*—Three plots of land were let to A. under one kabuliat. A. relinquished two plots, but admitted being in possession of one, alleging that the kabuliat had been obtained by fraud and misrepresentation. *Held* that as the lease was an entire contract, one portion only could not be repudiated on the ground of fraud; but that, if the tenancy was to be avoided on the ground of fraud, it must be avoided *in toto*. *ANABULLAH SHAIKH v. KOYLASH CHUNDER BOSE* [I. L. R., 8 Calc., 118]

S. C. KOYLASH CHUNDER BOSE v. ANABULLAH SHAIKH 9 C. L. R., 467

40. ———— Decree obtained by fraud.—*Judgments in rem.*—*Judgments inter partes.*—*Evidence Act, 1872, s. 44.*—Where a decree in a suit has been obtained by means of the fraud of one party against the other, it is binding on parties and privies and on persons represented by the parties so long as it remains in force, but it may be impeached for fraud and may be set aside if the fraud is proved. In the case of judgments *in rem*, the same rule holds good with regard to persons who are strangers to the suit. Where a decree has been obtained by the fraud and collusion of both the parties to the suit, it is binding upon the parties. It is also binding upon the privies of the parties, except, probably, where the collusive fraud has been on a provision of the law enacted for the benefit of such privies. But persons represented by, but not claiming through, the parties to the suit may, in any subsequent proceeding, whether as plaintiff or defendant, treat the previous judgment so obtained by fraud and collusion as a mere nullity, provided the fraud and collusion be clearly established. The same rule applies with regard to strangers where the previous judgment is a judgment *in rem*. *Quare.*—As to the proper construction of section 44 of the Evidence Act (I of 1872). *AHMEDBOY HUBIBBOY v. VULLEBBOY CASSUMBHOY* I. L. R., 6 Bom., 703

FRAUD—continued.**8. EFFECT OF FRAUD—continued.****Effect of fraud—continued.**

41. ———— Sale in execution of decree.—*Cancellation of sale.*—*Power of Court to refuse to confirm sale.*—The purchaser at a sale by public auction did, by the exercise of fraud, and collusion with the agent of the execution-creditor (though without the creditor's personal knowledge), succeed in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale. *Held* that the Court which ordered the sale had jurisdiction to refuse to confirm the sale on the ground of the fraud practised by the agent of the execution-creditor and the purchaser. *Held* by KERNAN, J., that the party defrauded ought not to be referred to bring a regular suit. The question ought to be decided at once on motion in the original cause. *Held* by MUTTUSAMI AYYAR, J., that fraud was a valid ground of relief on petition when it related to the mode in which the auction was held, and the purchaser was a party to it, but it was doubtful whether fraud was a ground of relief on petition when it was a remote cause of the sale. *SURESHJI RAU v. SRINIVASA RAU* [I. L. R., 2 Mad., 294]

42. ———— Construction 1841 of 17th June 1842.—*Purchase of decree.*—The plaintiff purchased lands which had been pledged to the defendant on a bond, and, subsequently, in order to prevent their being taken in execution of a decree obtained by the defendant for the amount of the bond, the plaintiff purchased the decree from the defendant, who, notwithstanding, took out execution against the lands and sold them as though the decree had never been sold. In a suit by the plaintiff to recover possession of the lands and for reversal of the execution-sale, *Held* it was no defence that the plaintiff had not notified this purchase of the decree to the Court in compliance with Construction 1841 of 17th June 1842. *SITARAM SAKU v. MOHAN MANDAR* B. L. R., Sup. Vol., 345: 3 W. R., 90

FREIGHT.

See BILL OF LADING.

[*Bourke, O. C.*, 171, 309
Bourke, A. O. C., 100
1 Ind. Jur., N. S., 230
I. L. R., 5 Bom., 313]

See CHARTER-PARTY 3 B. L. R., 340

FRESH SUIT.

See CASES UNDER RIGHT OF SUIT—FRESH SUITS.

FULL BENCH.

See REFERENCE TO FULL BENCH.

——— *Question of law referred to—*

See PRIVY COUNCIL, PRACTICE OF—PRACTICE AS TO OBJECTIONS.

[I. L. R., 1 Calc., 226
I. L. R., 3 I. A., 7: 25 W. R., 235]

FULL BENCH RULING.

See REVIEW—GROUND OF REVIEW.

[I. L. R., 6 All., 292

See REVIEW—REVIEWS AFTER TIME.

[B. L. R., Sup. Vol., 892

7 W. R., 405, 408

9 W. R., 103

● 10 W. R., 415

6 W. R., 100

I. L. R., 8 Calc., 700

1. ——— Effect of Full Bench ruling.

—*Retrospective effect.*—A Full Bench ruling, as it makes no new law but merely expounds what the law is, must have retrospective as well as prospective effect. **JUGHOOPA CHOWDHRAIN v. BUNWARRE TEWARRE** 20 W. R., 351

2. ——— Decree for maintenance.

—*Decision contrary to decree.*—A decree declaring a Hindu female entitled to maintenance from her father-in-law was held to bind the latter, notwithstanding a later Full Bench ruling to the effect that a daughter-in-law was not entitled to such maintenance. **NUND MOHUN CHUTTORAJ v. ROHINIE DEBIA** 22 W. R., 293

3. ——— Question of limitation.

—*Application in execution of decree.*—*Decision contrary to order on application.*—The decree in a suit for possession of immoveable property situate in the districts of Shahabad and Gya was affirmed on appeal by the Judicial Committee of the Privy Council on the 28th July 1871. On the 31st December 1877, an application was made to the Shahabad Court for execution, and this application was on appeal held by the High Court on the 13th September 1880 to be barred by limitation. In the meantime an application for execution was, on the 23rd August 1879, made in the Gya Court. This application was admitted on the 12th June 1880, and no appeal was preferred. In the meantime the order of the 13th September 1880 became, under a later Full Bench decision, an incorrect view of the law. *Held*, on appeal from an order made in proceedings held upon the application of the 23rd August 1879, that the decree-holder was entitled to proceed with the execution of the decree, and that the judgment-debtor was not entitled to refer to the order of the High Court, dated 13th September 1880, to show that it was inoperative. **BHOORONA ALUMBARI KONE v. JOBBAR SINGH** [11 C. L. R., 277

FURLOUGH.

See MAGISTRATE, JURISDICTION OF—
TRANSFER OF MAGISTRATE DURING
TRIAL . . . I. L. R., 2 Calc., 117

G**GAMBLING.**

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

[I. L. R., 7 Mad., 301

——— Suit to recover notes lost by—

See TROVER . . . 6 B. L. R., 581

GAMBLING—continued.

1. ——— Person "found gaming" in common gaming-house.—*Act XIII of 1866, s. 57.*—*Held*, on the evidence, that there was sufficient to show that the house in which the prisoners were arrested was a common gaming-house. A person is "found gaming" within the meaning of section 57 of Act XIII of 1866, who, having been seen gaming by an inspector of police, is shortly afterwards, in a place adjoining the room in which he was seen gaming, apprehended by police constables acting under the direction of such inspector. **REG. v. NANA MOROJI. IN RE MADHAV MORAR** . 8 Bom., Cr., 1

2. ——— Common gaming-house.

—*Hire of instruments of gambling.*—Common gaming-houses are houses in which instruments of gambling are kept or used for the profit or gain of the owner or occupier, whether by way of charge for the use of the instruments of gaming, or of the house, or otherwise howsoever. **QUEEN v. SUJJAD ALI** [3 N. W., 184

3. ——— Lottery tickets.—*Act III of 1867, ss. 1 and 4.*—Lottery tickets by reference to which it is to be decided whether the holder or purchaser wins the whole or any part of any stakes, are instruments of gaming within sections 1 and 4 of Act III of 1867, and they are instruments of gaming of a nature similar to cards. **ANONYMOUS** [12 W. R., Cr., 34

4. ——— Public gaming-house.—Gambling is not ordinarily punishable as an offence; it is only so punishable when carried on in a common gaming-house, or in a public street or place. **QUEEN v. SHEOSUNKUR SINGH** 3 N. W., 1
QUEEN v. SUJJAD ALI 3 N. W., 184

5. ——— Act III of 1867, ss. 4 and 18.—*Gambling in private house.*—The gist of the offence, under section 4 of Act III of 1867, consists in the fact that the house in which the gambling takes place is "a common gaming-house." The gist of the offence under section 18 is "the gambling in a public street or place." Gambling in a private house is not an offence under the Act. **QUEEN v. KHYROO** 2 N. W., 269

6. ——— Right to enter or search house.—*Act III of 1867, s. 5.*—To authorise an entry or search of a house, under section 5 of Act III of 1867, there must be credible information before the Magistrate or police officer, who may take action under such section, that the house is a common gaming-house. Unless a house is entered or searched under the provisions of section 5, the finding of cards, dice, &c., therein will not be *prima facie* evidence for the purposes mentioned in Act III of 1867. **QUEEN v. SUBSOOKH** 2 N. W., 476

7. ——— Beng. Act II of 1867.—*Publication as to notification of.*—The notification which the Government is empowered to issue under section 2 of the Gaming Act, Bengal Act II of 1867, should specify the limits of any town to which it is intended the Act should apply, and must be published in three consecutive Gazettes. Where a first notification which extended the Act to a town with specification

GAMBLING.—Beng. Act II of 1867—continued.

of limits to which it was intended to be applied, was published only once, and a subsequent notification published three times extended the Act to the town without specifying the limits to which the Act was to apply, it was held that the subsequent notifications were not sufficient, but that did not prevent the operation of the Act in places which are shown to be undoubtedly within the town according to its ordinary designation. *IN THE MATTER OF THE PETITION OF BANER MADHUB KOONDOL*. 21 W. R., Cr., 23

8. ——— s. 5.—*Unauthorized entry and arrest in gaming-house.—Evidence.—Presumption.*—Where a police officer, unauthorised by a Magistrate or District Superintendent of Police, enters and searches an alleged gaming-house, and arrests persons found therein, a Magistrate is justified in convicting such persons, if it is proved, without resorting to the presumption created by Bengal Act II of 1867, section 6, that the house is a gaming-house. *NAZIR KHAN v. PROLADH DUTTA*

[I. L. R., 4 Calo., 659]

9. ——— ss. 5 and 6.—*Right to enter and search gaming-house.*—A Deputy Inspector of Police is not authorised to enter and search an alleged gaming-house, unless he receives authority so to do from a Magistrate or a District Superintendent of Police. Where such an unauthorised entry and subsequent arrest of persons in a gaming-house takes place, there being no other evidence of an offence under section 5 of Act II of 1867, a Magistrate has no evidence before him on which he can convict. The evidence required cannot be presumed under section 6 of the Act, because that presumption only arises when the proceedings are authorised by section 5. *SREEN-AM CHANDRA LERKAN v. BIPINDASS*

[I. L. R., 4 Calo., 710]

10. ——— **Bombay Act III of 1866.—Entry under illegal search-warrant.**—Conviction of keeping a common gaming-house upheld where portion of the evidence against the accused consisted of instruments of gaming found in such a house, which had been entered in pursuance of a search-warrant illegally issued; there being sufficient *aliunde* to justify the conviction. *REG. v. NARAYAN SUNDUR*

[5 Bom., Cr., 1]

11. ——— s. 11.—*Coin.—Instrument of gaming.*—A coin is not an instrument of gaming within the meaning of section 11 of Bombay Act III of 1866. An instrument of gaming means an implement devised or intended for that purpose. *EM-PRESS v. VITRAL BHAIKHAND*

[I. L. R., 6 Bom., 19]

12. ——— s. 14.—*Common gaming-house.—Nuisance.—Penal Code, s. 268.*—A common gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of section 268 of the Penal Code. *REG. v. HAU NAGJI*

7 Bom., Cr., 74

GAMBLING ACT (XXI OF 1843).

See CASES UNDER CONTRACT—WAGERING CONTRACTS.

See TAZI MANDI CHITTIES.

[8 B. L. R., 412, 415, note]

GAZETTE, GOVERNMENT.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—GOVERNMENT GAZETTE . . . W. R., 1864, 50

See EVIDENCE—CRIMINAL CASES—GOVERNMENT GAZETTE . 7 B. L. R., 63

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868).

——— s. 1.—“*Include.*”—The word “include” in clause 13 and other clauses of section 1 of Act I of 1868 is intended to be enumerative, not exhaustive. *EMPRESS v. RAMANJIYA*

[I. L. R., 2 Mad., 5]

——— s. 2, cl. 5.

See JURISDICTION OF CIVIL COURT—SOVEREIGN PRINCES.

[I. L. R., 9 Calo., 535]

——— s. 2, cl. 18.

See SENTENCE—IMPRISONMENT.

[18 W. R., Cr., 8]

——— s. 3.

See LIMITATION ACT, 1877, ART. 132.

[I. L. R., 9 Bom., 233]

——— s. 3, cl. 1.—*Stamp Acts, 1862 and 1869, s. 2, and sch. 3.—Repeal by Act XIV of 1870, Effect of.*—By force of section 3, clause 1 of Act I of 1868, the mere repealing of section 2 and schedule 3 of Act XVIII of 1869 by Act XIV of 1870 did not *per se* revive the repealed portions of Act X of 1862. *ANONYMOUS* . . . 7 Mad., Ap., 9

——— s. 5.

See CANTONMENT MAGISTRATE.

[I. L. R., 8 Mad., 350]

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[7 Bom., Cr., 76]

——— s. 6.

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL OF—

[I. L. R., 1 All., 668]

I. L. R., 3 Calo., 662, 727

4 C. L. R., 18

I. L. R., 5 Calo., 259; 4 C. L. R., 23

I. L. R., 2 All., 785

See EXECUTION OF DECREE—EFFECT OF REPEAL OF ACT PENDING SUIT.

[I. L. R., 2 Bom., 148]

I. L. R., 3 Bom., 214, 217

I. L. R., 4 Bom., 163

I. L. R., 3 Mad., 98

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868), s. 6—continued.

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—PERIOD FROM WHICH LIMITATION RUNS . . . 11 Bom., 111

[I. L. R., 9 Calc., 446, 644
I. L. R., 11 Calc., 55

See OFFENCE COMMITTED BEFORE PENAL CODE CAME INTO OPERATION.

[I. L. R., 2 Calc., 225
I. L. R., 1 All., 509

See TRANSFER OF PROPERTY ACT, 1882.

[I. L. R., 6 All., 262
I. L. R., 11 Calc., 562
I. L. R., 12 Calc., 436, 505

1. ————— *Proceedings.*—*Procedure.*—*Civil Procedure Code, 1877-82, s. 3.*—*Proceedings in execution of decrees commenced before Act X of 1877.*—Section 6 of Act I of 1868 covers proceedings taken in execution of decrees which have been commenced before Act X of 1877 came into force. *Per GARTH C. J.*—“A suit is a “judicial proceeding,” and the words “any proceedings” in section 6 of Act I of 1868 include all proceedings in any suit from the date of its institution to its final disposal, and therefore include proceedings in appeal. The word “procedure” in section 3, Act X of 1877, has not the same meaning as the word “proceedings” in the above-mentioned section. *BUNJIT SINGH v. MEHREBAHS KONE*

[I. L. R., 3 Calc., 662; 2 C. L. R., 391

BURKUT HOSSEIN v. MAJIDOWITSA

[3 C. L. R., 206

NADIE HOSSEIN v. BISSEN CHAND BESSARAT

[3 C. L. R., 487

2. ————— *Pending proceedings.*—*Effect of repeal.*—An appeal having been filed on the 10th April 1879, a memorandum of objections under section 561 of the Civil Procedure Code was filed by the respondent on the 18th September 1879 before the actual hearing which took place in July 1880. *Held*, that the memorandum under section 561 of the Code as amended by section 86 of Act XII of 1879 ought to have been filed not less than seven days before the date fixed for hearing, and was therefore inadmissible. On an application for review,—*Held per MACLEMAN, J.*, distinguishing the case of *Ratanji Kulkarni, I. L. R., 2 Bom., 148*, that nothing having been done and no proceeding having been commenced by the respondent up to 31st May 1879, under the Procedure Code as it existed prior to that date, the filing of the memorandum was governed by the present Code as amended, and it was therefore inadmissible. *Held per MITTHER J.*, that the appeal, having been filed before Act XII of 1879 was passed, was a proceeding within the meaning of section 6 of the General Clauses Act, I of 1868, and that the new Act, therefore, did not affect the appeal. *RAM GOBIND JUGODEB v. DENO BUNDEHU SRI CHUNDUM MOHA-PATHE* 9 C. L. R., 281

3. ————— *Criminal Procedure Code, 1882, s. 558.*—*Change of procedure.*—*Effect on pending trial.*—S. was tried by a Sessions Court in

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868), s. 6—continued.

December 1882 on charges, some of which were triable by assessors, others by jury. Before the trial was concluded, the Code of Criminal Procedure, 1882, came into force. By section 269 of that Act, all such charges are to be tried by jury. By section 558 of the same Act the provisions of that Act are to be applied, as far as may be, to all cases pending in any Criminal Court on 1st January 1883. *Held* that, by virtue of section 6 of the General Clauses Act, 1868, the trial must be conducted under the rules of procedure in force at the commencement of the trial. *SRINIVASACHARI v. QUEEN*

[I. L. R., 6 Mad., 336

4. ————— *Deccan Agriculturists' Relief Act Amending Act, XXII of 1882.*—*Decree, Execution of.*—*Attachment.*—*Sale.*—*Proceeding.*—*Deccan Agriculturists' Relief Act, 1879.*—*Effect of repeal.*—On the 7th of September 1870, the applicant obtained a money-decree against agriculturist defendants, and having made five applications for execution up to 1879, realised a part of the judgment-debt. On the 2nd of September 1882—that is, after the coming into force of Act XVII of 1879—the creditor made his last application for recovering the balance by attachment and sale of the lands of the debtors. On the 1st of February 1883—while the above application was pending—Act XVII of 1879 was amended by Act XXII of 1882 so as to prohibit the sale of the immoveable property of agriculturists in execution of a decree, even though such decree was passed before the date of the Act. *Held*, notwithstanding the provision of section 6 of the General Clauses Act, I of 1868, and the attachment of the lands before the coming into operation of Act XXII of 1882, that the order for sale having been made subsequently, was illegal, and should be set aside. *SHIVRAM UDARAM v. KONDIBA* I. L. R., 8 Bom., 340

5. ————— *Limitation Act, 1871.*—*Operation of.*—*Appeals and applications.*—The Limitation Act, 1871, came into operation from 1st July 1871, with respect to appeals and applications, and was not controlled by the General Clauses Consolidation Act, 1868, section 6. *GOBIND LAKSHMAN v. NARAYAN MARESHVAR* 11 Bom., 111

BALKRISHNA v. GANESH . 11 Bom., 116, note

6. ————— *Limitation Acts, 1871 and 1877.*—*Effect of repeal.*—Under section 6 of Act I of 1868, the repeal of Act IX of 1871 by Act XV of 1877 did not affect any proceedings commenced before the repealing Act came into force. *In re Ratanji Kulkarni, I. L. R., 2 Bom., 148*, followed. *BEHARY LALL v. GOBHARDHAN LALL*

[I. L. R., 9 Calc., 446; 12 C. L. R., 481

7. ————— *Registration Acts.*—*Effect of repeal of Act.*—By section 6 of the General Clauses Act, a suit is to be governed by the Registration Law in force at the institution of the suit, and not by that which may be in force when it comes on for hearing. *OGHRA SINGH v. ABLAKHI KOOR*

[I. L. R., 4 Calc., 536; 3 C. L. R., 484

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868), s. 6—continued.

3. ————— *Repeal of Registration Act, VIII of 1871, by III of 1877.—Proceedings.*—*Held* that, under the provisions of section 6 of Act I of 1868 (the General Clauses Act), proceedings must be governed by the Act in force at the time when they were instituted. **MAHOMED HOSSEIN v. HADZI ABDULLAH** . . . I. L. R., 3 Calo., 727

4. ————— *Stamp Act, X of 1862, s. 3.—Offence under Stamp Act, 1862.*—By section 6 of Act I of 1868, an offence committed under section 3 of Act X of 1862, whilst that enactment was in force, is still an offence and may be tried under that enactment. **ANONYMOUS** . . . 7 Mad., Ap., 9

10. ————— *Effect of repeal.—Proceedings.—Bengal Rent Act (VIII of 1885), s. 5.*—The words “any proceedings commenced before the repealing Act shall have come into operation” in section 6 of the General Clauses Act (I of 1868) include an appeal against a decree made before the passing of the repealing Act, as such appeal must be considered a proceeding in the original suit. In a suit between landlord and tenant a decree was passed by the lower Appellate Court on the 28th of July 1885. Under the provisions of the Act then in force, namely, Bengal Act VIII of 1862, section 102, a second appeal to the High Court was prohibited. That Act was repealed by Act VIII of 1885, which came into force on the 1st of November 1885, this latter Act allowing an appeal to the High Court in suits similar to the one in question. A second appeal to the High Court in that suit was filed on the 18th of November 1885. *Held* that no appeal lay. **HURROSDAR DANI v. BROJOHARI DAS MANJI**

[I. L. R., 13 Calo., 86]

GHATWAL, RIGHT TO APPOINT—

See DECLARATORY DECREE, SUIT FOR—
MISCELLANEOUS SUITS.

[9 B. L. R., 18, note]

GHATWALI TENURE.

1. ————— *Nature of tenure.—Perpetual tenure.*—Ghatwali tenures are perpetual holdings subject to condition of service. **LEHLANUND SINGH v. MONORUNJAN SINGH** . . . 5 W. R., 101

2. ————— *Chakoran tenure.*—*Grant of ghatwali tenure.*—In the absence of long usage a ghatwali grant confers a mere chakoran holding or interest. **IN RE SARWAN SINGH**
[2 Ind. Jur., N. S., 149]

3. ————— *Ghatwals of Khurruckpore.—Perpetual hereditary tenure.*—The ghatwals of Khurruckpore hold a perpetual hereditary tenure at a fixed jumma payable in money and service, and cannot be evicted by the zemindar except for misconduct. **MUKHUNJUN SINGH v. LEHLANUND SINGH** . . . 3 W. R., 84

4. ————— *Right of resumption when service not required.*—In the absence of express words to the contrary, ghatwali lands held

GHATWALI TENURE.—Nature of tenure—continued.

under a lease which neither confirms nor recognises the pre-existing status of the ghatwals, nor confers on them any right other than that of holding the lands at a fixed rate as long as ghatwali service is required from them, are resumable by the zemindar when that service is no longer required. **LEHLANUND SINGH v. SARWAN SINGH** . . . 5 W. R., 292

5. ————— *Right to hold tenure on cessation of service.*—When ghatwals hold land, not under a sunnud conveying an hereditary indefeasible right, but on payment of a quit-rent, with enjoyment of the profits of the land in lieu of wages, such possession, however long, would not entitle them to hold the land at a fixed jumma, or to retain a portion of the land after they have ceased to perform the duties for which the land was assigned to them. **LEHLANUND SINGH v. NUSSEER SINGH**
[6 W. R., 80]

6. ————— *Succession to ghatwali tenure.—Female holder.*—Succession to ghatwalis is regulated solely by the nature of the ghatwali tenure, which descends undivided to the party who succeeds to and holds the tenure as ghatwal. A woman is not incapable of holding a ghatwali tenure. **KUSTOORA KOOMAREE v. MONOHUR DEO. GOVERNMENT v. MONOHUR DEO** . . . W. R., 1904, 39

7. ————— *Descent of ghatwali estates.—Females.*—A ghatwali estate is not necessarily held by males to the exclusion of females. **DOORGA PRASHAD SINGH v. DOORGA KOOMAREE**
[20 W. R., 154]

8. ————— *Services dispensed with.*—Although in custom the ghatwali tenure descended from father to son, no succession was legal or valid till confirmed by the zemindar and reported by him to the Government authorities. Where Government has dispensed with the services of the ghatwals, the zemindar is under no obligation to continue to appoint, and may, on a vacancy occurring, settle the tenure as he pleases. **MAHABUB HOSSEIN v. PATASU KUMARI**

[1 B. L. R., A. C., 190: 10 W. R., 179]

9. ————— *Power of Commissioner of Revenue.—Disqualification.*—A Commissioner of Revenue is not warranted by law, on the demise of a ghatwal, in considering the eligibility of rival claimants to the tenure (a perpetual and descendible one), and in rejecting the claims of the natural heir on considerations purely moral,—e.g., his having evinced a want of filial respect and dutiful feeling to his father. **LALL DHAREE ROY v. BROJO LALL SINGH** . . . 10 W. R., 401

10. ————— *Suit for khas possession of ghatwali lands.—Lands in decennially-settled estate.*—A suit for khas possession by Government will not lie in respect of ghatwali lands admittedly included in a decennially-settled estate. **GADHADHUR BANERJEE v. GOVERNMENT** . . . 6 W. R., 326

11. ————— *Ghatwal becoming default-er.—Beng. Reg. XXIX of 1814.—Transfer of tenure.*

GHATWALI TENURE.—Ghatwal becoming defaulter—*continued.*

—When a ghatwal becomes a defaulter, it is in the power of the authorities, according to Regulation XXIX of 1814, to transfer his tenure, and that power is not put an end to by the money being offered before the tenure is actually made over to another person. **CHITTRO NARAIN SINGH TEKAIT v. ASSISTANT COMMISSIONER OF SONTHAL PER-GUNNAHS.** 14 W. R., 203

12. ———— *Resumption and Assessment.*—*Beng. Reg. I of 1793, s. 8, cl. 4.*—The ghatwali lands in the zemindari of Khurruckpore are not liable to resumption and re-assessment under clause 4, section 3, Regulation I of 1793, relating to thannah or police establishments. **LEELANUND SINGH v. GOVERNMENT OF BENGAL**

[4 W. R., P. C., 77; 6 Moore's I. A., 101]

13. ———— *Resumption of service tenure.*—In 1775 a rent-free sanad was granted to *M.* for having put down wild elephants, the consideration in future being to cultivate, and keep up a body of men, and take care of the ryots. *M.* died and a fresh sanad was in 1786 granted to *K.* and *R.*, they being thought to be his heirs; but in 1807, *M.*'s true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to *K.* and *R.*, reciting the circumstances; both these sanads were to cultivate, keep up a body of men, keep off elephants, and attend to the safety of the ryots. *Held* that this was not a service tenure that could be resumed, and the subject of service tenures was explained. **FORBES v. MIR MAHOMED TAKI** 5 B. L. R., 529

[14 W. R., P. C., 28
15 Moore's I. A., 438]

14. ———— *Terms implying hereditary tenure.*—*Construction of grant.*—Suit for resumption of a ghatwali tenure.—*Held* that the sanad in this case was personal to the grantee, and that it did not confer on his descendants or representatives a hereditary transferable and permanent tenure at a fixed rate. *Held* also that the clearest and most precise definition, such as *istemrari* and *maurasi*, with the addition of *nuslun be nuslun* (from generation to generation), would be necessary to support the appeal. **SONA v. LEELANUND SINGH**

[5 W. R., 290]

15. ———— *Assessment of rent.*—*Evidence of grant.*—*Former dismissal of suit for rent.*—Long possession (presumably from the Decennial Settlement) and gradual cultivation by a ghatwal on payment of a quit-rent (and not merely possession without cultivation) are evidence of an implied grant which protects the ghatwal from enhancement or assessment on the land so cultivated. An adjudication by a competent Court made sixty years ago dismissing the landlord's claim to rent from the ghatwal is evidence of the highest order as to the right of the ghatwal in a suit brought by a landlord for a declaration of right to take rent in future. **ERSKINE v. MANICK SINGH GHATWAL**

[6 W. R., 10]

GHATWALI TENURE.—Assessment of rent—*continued.*

16. ———— *Suit to assess ghatwal.*—*Act X of 1859, ss. 3 and 15.*—Where it was admitted that the ghatwal defendant's tenure dated from a time anterior to the Decennial Settlement, and before the creation of the zemindari, the defendant is protected, whether under section 3 or under section 15, Act X of 1859, from any fresh assessment. **ERSKINE v. GOVERNMENT**

[8 W. R., 232]

17. ———— *Enhancement of rent.*—*Hereditary tenure.*—*Services, Cessation of.*—*Act XI of 1859, s. 37.*—The plaintiff, an auction-purchaser of a zemindari at a sale for arrears of revenue, sued in 1863 to eject the defendants from certain mouzahs included in the zemindari, and which were held by the defendants under a ghatwali tenure, on the ground that the service for which the grant was made was no longer required, and that the sanad or grant contained no words of inheritance. The defendants proved that the grant was made in the year 1743 to *M.*, after whose death the land was in the possession of *M.*'s heir-at-law prior to the Permanent Settlement; and that he and his ancestors had enjoyed uninterrupted possession in direct succession from a period prior to the Permanent Settlement at a quit-rent of Rs 61 per annum. The Collector appeared on behalf of the Government, and stated that the ghatwali services had not been dispensed with by the Government, but might be required at any time. *Held*, the plaintiff was not entitled to eject the defendants. *Per PHACOOCK, C. J.*—The case falls within, and is protected by, section 37 of Act XI of 1859. *Per TREVOR and JACKSON, JJ.*—Section 37 of Act XI of 1859 does not apply to the case. *Quare.*—Is the zemindar entitled to enhance the rent of a ghatwal in lieu of service? **KOOLDEEP NARAIN SINGH v. MOHADRO SINGH** B. L. R., Sup. Vol., 559; . 6 W. R., 199

Held on appeal to the Privy Council.—A purchaser at an auction-sale cannot, where lands are held under an hereditary ghatwali tenure originally created before the Decennial Settlement and at a fixed rent, resume those lands on the suggestion that the ghatwali services are no longer required. The omission of words of inheritance does not show conclusively that a sanad is not hereditary: it being shown that a ghatwali tenure had descended from father to son for several generations, it was held that it was an hereditary tenure. **KOOLDEEP NARAIN SINGH v. GOVERNMENT OF INDIA**

[11 B. L. R., 71]

14 Moore's I. A., 247

18. ———— *Grants prior to Permanent Settlement.*—*Beng. Reg. VIII of 1793, s. 51, cl. 1.*—*Enhancement of rent.*—*Suit for.*—Where grants of land had been made prior to the Permanent Settlement on ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the services on the part of the zemindar,—*Held*, in a suit by the zemindar to enhance the rents, that as long as the ghatwals were able and willing to perform the services, the zemindar had no right to enforce payment of an enhanced rent on the ground

GHATWALI TENURE.—Enhancement of rent—continued.

that the services were no longer required. The ghatwals are dependent talookdars within the meaning of Regulation VIII of 1793, and are protected from enhancement by clause 1 of section 51 of that Regulation. **LEELANUND SINGH v. MUKHUNJUN SINGH** . . . I. L. R., 3 Cal., 251

19. ——— Resumption.—*Purchaser at auction-sale, Rights of.—Beng. Reg. XLIV of 1793.—Enhancement of rent.—Refund of revenue.*—Where, prior to the Permanent Settlement, grants of land had been made on ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the performance of the ghatwali services on the part of the zemindar,—*Held*, in a suit by the zemindar to resume the lands, that as long as the ghatwals were willing and able to perform the services, the zemindar had no right to put an end to the tenure on the ground that the services were no longer required. A purchaser at a sale for arrears of Government revenue is not entitled, under Regulation XLIV of 1793, to cancel a ghatwali tenure created subsequently to the Permanent Settlement. *Quære*,—Whether he would be entitled to enhance the rent. Where lands granted on ghatwali tenure were, in accordance with a decision of the Special Commissioner, resumed by Government, who made a settlement with the ghatwals, under which the latter continued to pay to the Government half the sum assessed as revenue, reserving the other half to themselves, and the resumption proceedings were subsequently reversed by the Privy Council,—*Held* that the ghatwals were entitled to a refund of the sum paid by them to Government, less the sum which the zemindar ought to have received from them for rent during the time they had paid to Government. **LEELANUND SINGH v. MUKHUNJUN SINGH**. **MUKHUNJUN SINGH v. LEELANUND SINGH** [18 B. L. R., 124 I. R. I. A., Sup. Vol., 181

20. ——— Resumption.—Compensation.—In the Khurruckpore ghatwali mehals the profits of the lands, *minus* the quit-rent paid to the zemindar, represented the remuneration given to the ghatwals for police services. Government illegally resumed those lands, dispensing with the services of the ghatwals, and settled the tenures with the ghatwals at half the rent current in that part of the country. The resumption proceedings having been set aside, it remained to determine to whom and in what proportions Government should refund the half jumma taken by it as rent from the ghatwals during the period of settlement. *Held* that, inasmuch as the ghatwals rendered no service during the period of settlement, the moiety of the jumma retained by them was ample compensation for any loss they might have sustained, and the zemindar was entitled to receive the whole of the moiety taken by Government, partly as quit-rent due to him, and partly as compensation for loss of the ghatwals' services during the continuance of the settlement. **LEELANUND SINGH v. GOVERNMENT** . . . 2 B. L. R., A. C., 114

21. ——— Acquisition of land.—Compensation.—Where land forming part of a ghatwali

GHATWALI TENURE.—Acquisition of land—continued.

tenure in the district of Beerbhoom was taken up for public purposes,—*Held* that neither the zemindar nor the under-tenants of the ghatwal could claim a proportionate share in the compensation-money payable for such land. The money so obtained carries with it all the incidents of the original ghatwali tenure, and the ghatwal for the time being is entitled only to the interest accruing therefrom during his lifetime. **RAM CHUNDER SINGH v. JOHNS JUMMA KHAN** . . . 14 B. L. R., Ap., 7: 23 W. R., 376

22. ——— Dismissal of ghatwal.—Jurisdiction of Civil Court.—The Civil Courts cannot interfere to reinstate a ghatwal, who has been dismissed by the police authorities, in the land which he formerly held as ghatwal. The right to possess the land depends on the tenure of the office. **DEBEE NARAIN SINGH v. SREE KISHEN SEN** [1 W. R., 321

23. ——— Misconduct of ghatwal.—Forfeiture of tenure on dismissal.—The dismissal of a ghatwal will carry with it the forfeiture of his tenure. **SECRETARY OF STATE v. PORAN SINGH** . . . I. L. R., 5 Cal., 740

24. ——— Arrears of rent, Liability of successor for.—Service tenure.—A., the holder of a service tenure, subject to a quit-rent to the zemindar, died, leaving his rent for the last three years unpaid. B., his son, succeeded him in the tenure. *Held* that the zemindar could not sue B. as A.'s successor in the tenure for A.'s arrears of rent. **NILMONER SINGH v. MADHUB SINGH** [1 B. L. R., A. C., 195

See NILMONER SINGH v. BUKRONATH SINGH [10 W. R., 255

25. ——— Debts of deceased holder, Liability for.—The rents of a ghatwali tenure are not liable for the debts of the former deceased holder of the tenure. **BINODE RAM SEN v. DEPUTY COMMISSIONER OF THE SONTAL PERGUNNAHS** [6 W. R., 129: S. C. on review, 7 W. R., 178

26. ——— Power of alienation.—Transfer of tenure.—A ghatwal cannot give a pottah of his tenure binding a subsequent ghatwal. The rights and interests of each ghatwal in his tenure last only for his life. **JOGESWAR SIKKAR v. NIMAI KARMAKAR** . . . 1 B. L. R., S. N., 7

27. ——— Reg. XXIX of 1814.—Alienation by ghatwal in Beerbhoom.—Ejectment by Court of Wards.—A ghatwal of Beerbhoom granted a lease to A. After A. and his heirs had been in possession of the lands under the lease for sixty years, a surburakar appointed by the Court of Wards for the estate of the heir of A.'s lessor, then a minor, entered upon the lands, and ejected the person then in possession under the lease. *Held* that notwithstanding the ghatwals of Beerbhoom (independently of the recent Statute) had not the power of alienation, still, having an estate in perpetuity so long as the services were performed and the rent paid, the lease could not be regarded as a nullity,

GHATWALI TENURE.—Power of alienation—continued.

and the subburakar was not justified in ejecting the tenant without legal process. **RUNGOLALL DEO v. DEPUTY COMMISSIONER OF BEERBHOM. DEPUTY COMMISSIONER OF BEERBHOM v. RUNGOLALL DEO** [Marsh, 117 : W. R., F. R., 34 1 Ind. Jur., O. S. 34 : 1 Hay, 200

32. ————— Ghatwals of Beerbhoom.—Leases granted by.—Permanent leases granted by the ghatwals of Beerbhoom prior to the Decennial Settlement, for the due performance of the police duties for which the lands were originally granted to the ghatwals, and which have been held from generation to generation, cannot be set aside at the instance of the present sirdar ghatwal. The creation of such under-tenures is not beyond the powers of the ghatwals. **MUKURBHAROO DEO v. KOSTOORA KOONWARRE** . . . 5 W. R., 215

33. ————— Power of creating incumbrances.—A ghatwal in the district of Beerbhoom is not competent to grant a lease of the whole or a portion of his ghatwali tenure in perpetuity. Ghatwali tenures in Beerbhoom are grants of land by the Government to individuals for the performance of certain police duties. These tenures are heritable, but the incomes arising from them cannot be charged or encumbered by the ghatwal in possession so as to bind his successor. **GRANT v. BANGSI DEO** . . . 6 B. L. R., 652 : 15 W. R., 38

34. ————— Power of ghatwal to grant mokurrari leases.—Jungleburi leases.—Any presumption that there may be against the right of a ghatwal to grant mokurrari leases cannot hold good against such leases, when granted in good faith, for the clearance of jungle. **DAVIES v. DEBER MAHTOON** . . . 18 W. R., 376

35. ————— Sale or attachment in execution of decrees.—Ghatwali tenures are not liable either to sale or attachment in execution of decrees. The surplus proceeds of such a tenure collected during the lifetime of the judgment-debtor are liable to be taken in execution as being personal property, but profits accumulated after the death of the judgment-debtor are not so liable. **KUSTOORA KOOMAREE v. BINODERAM SEIN** . 4 W. R., 1512, 4

36. ————— Ghatwals of Khurruckpore.—The lands of the ghatwals of Khurruckpore are not capable of alienation by private sale or otherwise, nor liable to sale in execution of decrees, except with the consent of the zemindar and his approval of the purchaser as a substitute for the out-going ghatwal. **LEELANUND SINGH v. DOORGA-BUTTY** . . . W. R., 1864, 240

37. ————— Sale of rights and interest in ghatwali tenure.—The proprietor K. of a ghatwali talook in Bhagulpore sold one mouzah out of it to defendant L. Some time afterwards K.'s right was sold in execution of a decree, and purchased by plaintiff C., who obtained a sunnud from the zemindar as ghatwal. Subsequently, the zemindar having compounded with Government for a money payment in lieu of ghatwali services, gave G. a mokurrari

GHATWALI TENURE.—Power of alienation—continued.

pottah of the ghatwali estate. G. then sued L. for possession of the mouzah purchased by the latter. *Held* that K. had no power to sell the whole of the ghatwali estate to L. without the consent of the zemindar; and that when he sold a part the interest which he conveyed could not be higher than what he himself had; accordingly when his entire rights and interests were sold those of G. ceased. *Held* that the zemindar, by granting a fresh ghatwali sunnad, appointed the grantee to the office of ghatwal, and disallowed the sale made by K. to G. **LALLA GOOMAN SINGH v. GRANT** . . . 11 W. R., 292

38. ————— Nature of such tenure.—Sale of tenure.—Misdescription in proclamation of sale.—*Beng. Reg. XXXIV of 1814.*—In the area of a zemindari were included at the Permanent Settlement the mouzahs which made up the mahal of a jaghir, the succession to which was subject to the sanction of Government, the jaghirdar being bound to render public services. One third of the revenue assessed upon the jaghir mahal was retained by the jaghirdar, forming no part of the zemindari assets on which the jumma of the latter was fixed. *Per JACKSON, J.*—Where a jaghir is held by a person subject either to the appointment or approval of Government, and with an additional burden of public duty to the Government, such a jaghir cannot be attached and sold in satisfaction of the debts of the jaghirdar's predecessor in title as land coming into his possession from the hands of the deceased jaghirdar, as the appointment and approval of the Government deprive the jaghir of the character of simple heritable property. *Per AINSLIE, J. (dissenting).*—The fact that the Government could dismiss a ghatwal, and so cut off the descent, does not destroy the generally hereditary character of the holding, or make such lands, when included in the Permanent Settlement, police lands resumable by Government under clause 4, section 8 of Regulation I of 1793. *Per WHITE, J.*—Where a tenure is held under services which are not private or personal to the zemindar, but are of a public nature, a proclamation issued for the sale of the tenure describing it as an ordinary rent-paying one and ignoring the important fact that the tenure is a service one, is bad, and is such a misdescription of the tenure as would vitiate a sale held under such a proclamation. **BUKRONATH SINGH v. NILMONI SINGH**

[I. L. R., 5 Cal., 389 : 4 C. L. R., 583

Held on appeal to the Privy Council that whether this jaghir was a ghatwali tenure or not, within the meaning of the term as applied in Regulation XXIX of 1814 (the zemindari being Pachit, adjoining, and at one time included in, Birbhoom), the jaghir was analogous to such tenure as described in the preamble to the Regulation. *Held*, also, that the nature of the tenure had not been altered by the Permanent Settlement, after which the services due by the jaghirdar remained as before public services, and continued to be due to the Government. That the zemindar became entitled only to the rent or revenue which was previously due to the Government, and in respect of which he was assessed, and did not become entitled to

GHATWALI TENURE—Power of alienation—continued.

the services in respect whereof the one third of the rent or revenue was allowed as compensation to the jaghirdar. That the jaghir, though hereditary, was not subject to the ordinary rules of inheritance according to the Hindu or the Mahomedan law, but was held upon the condition of approval of the heir by the Government. Thus were precluded both division of the jaghir mehal upon the death of the holder, and alienation during his life. It followed that the jaghir mehal was not liable to attachment and sale in execution of a decree against the father and predecessor in estate of a jaghirdar so approved, as assets by descent in the possession of the latter. *Leelanand Singh v. Government of Bengal*, 6 Moore's I. A., 101, followed. *NILMONI SINGH DEO v. BUKHONATH SINGH* . . . I. L. R., 9 Cal., 187 [I. L. R., 9 I. A., 104]

35. ———— Execution of decrees.—Attachment.—Shikmi ghatwali tenure.—A shikmai ghatwali tenure, held under the superior ghatwali, is not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder. *BALLY DOBRY v. GANHI DEO* . . . I. L. R., 9 Cal., 368

36. ———— Ghatwali tenures in Khurruckpore.—Transferability of ghatwali tenures.—Mitakshara law inapplicable to ghatwali tenures.—Family custom inapplicable to ghatwali tenures.—A ghatwali tenure in Khurruckpore is transferable if the zemindar assents and accepts the transfer. Such assent and acceptance may be presumed from the fact of the zemindar having made no objections to a transfer for a period of over twelve years, and when such a fact has been found a Court ought to recognise such a transfer. In a suit brought to recover possession of a ghatwali tenure situated in Khurruckpore which had been brought to sale in execution of a decree against the previous ghatwali and purchased by the defendants, the plaintiffs sought to rely on the Mitakshara law and certain family custom for the purpose of establishing their right. The lower Court, applying such law and custom, found that the tenure was transferable and that it was joint ancestral property, and gave the plaintiffs a decree for two thirds of the property, and the defendants a decree for the remaining one third, holding that to be the extent of the previous ghatwali interest which had been purchased by the defendants. *Held*, on appeal, that the decision of the lower Court was erroneous; that in dealing with a ghatwali tenure the Court must have regard to the nature of the tenure itself and to the rules of law laid down in regard to such tenures and not to any particular school of law or the customs of any particular family; and that a ghatwali being created for a specific purpose, has its own particular incidents and cannot be subject to any system of law affecting only a particular class or family. *ANUNDO RAI v. KALI PROSAD SINGH* [I. L. R., 10 Cal., 677]

GIFT.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY . I. L. R., 2 All., 438 [I. L. R., 6 All., 313]

GIFT—continued.

See CONTRACT ACT, s. 25.

[I. L. R., 2 All., 891]

See CASES UNDER HINDU LAW—GIFT.

See HINDU LAW—JOINT FAMILY—POWER OF ALIENATION BY MEMBERS—OTHER MEMBERS . I. L. R., 1 All., 429

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY DEED, GIFT, OR WILL . I. L. R., 5 Cal., 684 [I. L. R., 1 Cal., 104]

See HINDU LAW—WIDOW—POWERS OF WIDOW—POWER OF DISPOSITION OR ALIENATION . 6 W. R., P. C., 131 [I. L. R., 7 Bom., 491 I. L. R., 1 Mad., 307]

See HINDU LAW—WILL—POWER OF DISPOSITION—DISHERISON. [I. L. R., 1 Bom., 561]

See CASES UNDER MAHOMEDAN LAW—GIFT.

— To a class.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—SPECIAL CASES OF CONSTRUCTION—TRUSTS, PERPETUITIES, AND BEQUESTS TO A CLASS.

See WILL—CONSTRUCTION.

[I. L. R., 4 Cal., 304, 670]

— Void for remoteness.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—SPECIAL CASES OF CONSTRUCTION—REMTENESS.

1. ———— Subsequent condition attached to gift.—Void condition.—To a gift divesting the donor of all his interest in certain property, a condition cannot afterwards be attached. Where a gift completed by transfer rested on a valid consideration at the time when it was made, *—Held* that even assuming that a condition could be afterwards imported into the transaction, and that condition an immoral one, this would not invalidate the gift, the general rule of law being that a gift to which such a condition is attached remains a good gift while the condition is void. A gift of villages was complete, being followed by transfer of possession. Afterwards in a petition to the Collector for "dakhil kharij" between the parties, the donor stating the gift added that it was on certain conditions, *—Held* that the petition must be treated as ineffective for the purpose of adding any condition. *RAM SARUP v. BELA* . . . I. L. R., 6 All., 313 [S. C. I. R., 11 I. A., 44]

Affirming the decision of the High Court in *LACHMI NARAIN v. WILAYATI BEGAM*

[I. L. R., 2 All., 438]

2. ———— Construction of gift as to quantity of estate given.—Gift when operative without delivery of possession.—Hindu Law.—The rule as to the construction of the language in which

GIFT.—Construction of gift as to quantity of estate given—continued.

a gift is made, independently of the "Transfer of Property Act," Act IV of 1882 (which may, or may not, have been expressed so as to lay down, in favour of absolute gifts, a rule more positive), is that indefinite words of gift are calculated to convey all the interest of the grantor, it being also necessary to read the whole of an instrument in order to gather the intention. A gift being thus expressed,—“I put a stop to my interest in those taluqs, and withdraw my enjoyment thereof, and I make them over to you,”—*Held* that this must be read with what preceded it, *viz.*, “in order that you may perform those religious ceremonies, celebrate the festivals satisfactorily, and may provide for your own support, by having the property under your authority and control;” and that the words of gift must be taken to be limited by the purpose of the gift; the whole taken together showing that the donor’s intention was that the donee should take the property for life only. *Held* also that, consistently with the authorities in the Hindu law, a gift, where the donor supports it, the person who disputes it claiming adversely to both donor and donee, is not invalid for the mere reason that the donor has not delivered possession; and that where a donee or vendee is, under the terms of the gift or sale, entitled to possession, there is no reason why such gift or sale, though not accompanied by possession, whether of moveable or immovable property (where the gift or sale is not of such a nature as would make the giving effect to it to be contrary to public policy), should not operate to give the donee or vendee a right to obtain possession. **KALIDAS MULLICK v. KANHAYA LAL PURDIT**

[I. L. R., 11 Cal., 121
L. R., 11 I. A., 218]

3. ——— Gift of land in consideration of performance of services.—*Failure to perform services.—Obligation to restore land.—Revocable gift.*—Plaintiff’s father and defendant entered into an agreement in 1850, by which the former delivered over certain lands to the latter in consideration of his promises to perform certain services. Plaintiff brought this suit for restoration of the land, alleging that defendant had failed to perform the services. Defendant denied failure to perform and pleaded that the contract was not revocable. *Held*, in special appeal, reversing the decisions of the lower Courts, that the question was whether there was in this case the offer of one performance for the other, and whether the continuous performance of the services on the one side was the presupposition of the continuous existence of the gift on the other, or whether there was a mere gift with a charge upon it, the primary intent being to give; that this was a question of construction; and that, in the present case, taking the agreement and counterpart together, there was clearly a covenant for the hereditary performance of the services. **KACHUR SUBRAYA v. BENGAL SANTAPPAIYA**

[7 Mad., 167]

4. ——— Gift of Government promissory notes.—*Necessity of endorsement.—Intention.*—The plaintiffs, *M.* and *R.*, were Parsis, and were married in the year 1851. The defendant was the

GIFT.—Gift of Government Promissory Notes—continued.

widow of *B. M.*, who was the father of the plaintiff *R.* The plaintiffs sued to recover from the defendant certain Government promissory notes which they alleged had been presented by *B.* to *M.* at her marriage for her sole and separate use. They alleged that the said notes, then of the nominal value of Rs. 1,500, were endorsed in the name of the said *B.* and had been deposited by him for safe custody with *M.*’s grandfather *J.*; that the said *B.* during his life used from time to time to receive the said notes from *J.*, and draw the interest thereon for *M.*; that *B.* died in 1864, and that after his death the defendant, who was his widow and executrix, used to draw the interest for *M.*; that in 1869 she obtained possession of the said notes, and had ever since continued in possession thereof, informing the plaintiffs that she was duly keeping them and collecting the interest for *M.*; that the plaintiffs had been living with the defendant until shortly before the present suit, and having then separated from her, had called upon her to hand over the notes and the accumulated interest, which she refused to do. The defendant denied that her husband *B.* had presented *M.* with Government notes for her separate use. She alleged that the notes which had been deposited by *B.* with *J.* were her own separate property, and not *M.*’s; that she and her husband had dealt from time to time with them, and that no interest was ever paid to the plaintiffs, or either of them, or for their benefit. She further stated that some of the notes which had been deposited with *J.* had been disposed of by *B.* in his lifetime with her consent; that in 1869 she obtained the remaining notes from *J.* and sold them, and applied the proceeds to her own benefit. At the hearing it was proved that on the occasion of the plaintiff’s marriage, presents were made to *M.* both by her own family and by that of the bridegroom *R.* Two accounts were then opened in the books of the firm of *J. N. & Co.*, of which *M.*’s grandfather *J.* was a partner, one of which showed her acquisitions from her own family and the other her acquisitions from the family of her husband. The latter account contained an entry (under date August 1854) to the effect that the father-in-law of *M.* had bought two Government notes for Rs. 1,500 in *M.*’s name, and had obtained the interest on them, which was duly credited to her. Other documents were produced, proved to be in the handwriting of *B.* and *J.*, in which the said Government notes were alluded to as the property of *M.* and as having been purchased with her moneys. In 1864 *B.* died without having endorsed the notes over to *M.* or to any one in her behalf, and they remained in his name in the hands of *J.* until 1869, when the defendant got possession of them. *Held* that the notes not having been endorsed to *M.* there was no valid gift of them to her by *B.* If *B.* intended to bestow the notes as a gift only, without any intention that his purpose should be effected otherwise than by a substitution of ownership, his purpose remained unfulfilled, and the Court could not fulfil it for him. Without endorsement, or something equivalent, a gift of Government stock cannot be completed. Where a particular form of transfer is prescribed by law, a transfer in another form is as inefficacious *inter vivos* as in a will. *Held*, further

GIFT.—Gift of Government promissory notes—continued.

that having regard to the general practice among Parsis, the conduct of *B.* in relation to the notes showed that it was his intention that the property should be enjoyed in sole and separate use by *M.* and her children. Among Parsis a gift may be made to the separate use of a married woman, or of a woman about to be married. *MERRAI v. PEROZBAI*

[I. L. R., 5 Bom., 268]

GOMASTA.

See *BENGAL RENT ACT*, 1869, s. 80.

[10 W. R., 51]

16 W. R., 149

20 W. R., 386

See *CIVIL PROCEDURE CODE*, 1882, ss. 37, 38, 417, 432 (1859, s. 17)

[5 B. L. R., Ap., 11]

See *INSOLVENT ACT*, s. 9.

[I. L. R., 5 Calc., 605]

See *PRINCIPAL AND AGENT—AUTHORITY OF AGENTS*. *Bourke, A. O. C.*, 43

[*Marsh*, 262, 384]

2 Agra, 275

11 W. R., 43

GOOD FAITH.

See *DEFAMATION*. I. L. R., 4 Calc., 124

[4 W. R., Cr., 22]

2 N. W., 473

I. L. R., 3 All., 342, 664, 815

I. L. R., 4 Bom., 298

I. L. R., 9 Bom., 269

GOODS OBTAINED BY OFFENCE OR FRAUD.

See *CONTRACT ACT*, s. 178.

[I. L. R., 3 Calc., 264]

GOODS OF DANGEROUS NATURE, CARRIAGE OF.

See *NEGLIGENCE*. I. L. R., 1 All., 60

GOODS PLEDGED BY INSOLVENT, AND RE-DELIVERED TO HIM ON COMMISSION SALE.

See *INSOLVENCY—ORDER AND DISPOSITION.*

[I. L. R., 3 Calc., 58]

GOODS, SEIZURE OF, IN POSSESSION OF PLEDGEE.

See *RAILMENT*. 5 B. L. R., Ap., 31

GOODS SOLD AND DELIVERED.

1. ———— *Action for.—Principal and agent.—Delivery by, and payment to, unauthorised agent.*
—The defendant, through a broker, purchased from the plaintiffs certain goods, to be paid for by cash on delivery, and before removal. Both the defendant and his broker knew that the plaintiffs had a separate cash office where payments for goods of the descrip-

GOODS SOLD AND DELIVERED.—Action for—continued.

tion purchased were usually made, and the broker knew that the delivery clerk, whose duty it was to deliver the goods, had no authority to do so without a special order from the plaintiffs. A portion of the goods was paid for at the cash office, and delivery thereof obtained from the delivery clerk in the usual way. For the remainder of the goods, the broker on behalf, but without the knowledge, of the defendant, paid the delivery clerk and obtained delivery from him of the goods without any order for delivery having been given by the plaintiffs. The plaintiffs, a year subsequently, discovered that the delivery clerk had embezzled the money so paid to him. *Held* that they were entitled to recover the balance of the price of the goods from the defendant in an action for goods sold and delivered. *MACKENZIE, LYALL, v. SHIB CHUNDER SHAL*

12 B. L. R., 360

2. ———— Agreement for sale of goods.

—*Place of delivery.*—In the absence of any agreement as to delivery, goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement for sale, or, if not then in existence, at the place at which they are to be produced. Distinction between an ordinary contract for sale of goods and a contract to pay an existing debt in specific articles pointed out. *DADABHAI NARSI v. SALLEMAN DASSI*

5 Bom., A. C., 127

GOODS AND CHATTELS.

See *SMALL CAUSE COURT, PRESIDENCY*

TOWNS—JURISDICTION—MOVEABLE PROPERTY. I. L. R., 4 Calc., 946

[10 B. L. R., 448]

GOONDAISH LANDS.

——— *Meaning of goondaish.*—Goondaish lands are lands which in some way or other have been taken up by the holders of the lands measured at the time of the Government survey as something which they had right to annex to the surveyed lands. *ASANOOLLAH v. SAFFER ALI*

21 W. R., 135

GORABANDI TENURE.

——— *Nature of tenure, Transferability of.—Onus probandi.*—The onus lies upon a plaintiff claiming, in virtue of a purchase of the tenure from the former holder, to be entitled to possession of gorabandi lands, to prove that such lands are transferable. *Per curiam*: there are no decided cases, nor is there any evidence to show either that gorabandi rights are more extensive than rights of occupancy, or if more extensive, extensive in this particular direction,—that is to say, that they are transferable. *CHUTTEBHUI BHARTI v. JANKI PRASAD SINGH*

4 C. L. R., 298

GOVERNMENT.

——— *Application by, to protect revenue when not a party to suit.*

See *DECREE—ALTERATION OR AMENDMENT*

OF DECREE. 2 C. L. R., 461

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GOVERNMENT—continued.**Liability of—**

See **RIGHT OF SUIT—ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.**

[I. L. R., 1 Cal., 11]

Power of, to extend time for appeal.

See **ACT XXVIII OF 1860.**

[I. L. R., 1 Mad., 192
I. L. R., 7 Mad., 280]

Provision in Act for benefit of—

See **BOMBAY ACT II OF 1863.**

[I. L. R., 2 Bom., 529]

Right of, to Court fees.

See **PAUPER SUIT—SUITS.**

[I. L. R., 1 Bom., 7
I. L. R., 2 All., 196
I. L. R., 1 All., 596
2 B. L. R., Ap., 22]

Right of, to island in navigable river.

See **ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHUBS OR ISLANDS IN NAVIGABLE RIVER.**

[6 B. L. R., Ap., 93
14 B. L. R., 219
7 W. R., 103
20 W. R., 276
23 W. R., 110
L. R., 7 I. A., 73]

Sanction to or prohibition of adoption by.

See **HINDU LAW—ADOPTION.**

[I. L. R., 1 Bom., 607]

GOVERNMENT AND ZEMINDAR, KABULIAT BETWEEN—

See **SPECIFIC PERFORMANCE—SPECIFIC PERFORMANCE NOT ALLOWED.**

[I. L. R., 3 Cal., 464]

GOVERNMENT CURRENCY NOTE, THEFT OF—

See **CONTRACT ACT, s. 76.**

[I. L. R., 3 Cal., 379
1 C. L. R., 339]

See **CRIMINAL PROCEDURE CODE, 1882, s. 520 (1872 s. 419).**

[I. L. R., 3 Cal., 379
1 C. L. R., 339]

Forgery of currency note.—Notice.—Delay.—A person who receives a forged currency note in payment is not (in order to entitle himself to be paid a second time), upon discovering the forgery, bound to give immediate notice of it to the person from whom he receives the forged note, the rule relating to forged acceptances on bills of exchange not applying. *Semle*.—That if the delay in communicating the fact of the forgery of the note were so great as to

GOVERNMENT CURRENCY NOTE, THEFT OF.—Forgery of currency note—continued.

damify the payer of it in his remedy against, or in his power of tracing, the person from whom he received his note, such delay would be a good defence in an action brought upon the original consideration. **MATHEWS v. GIRIDHARILAL FATECHAND**

[7 Bom., O. C., 1]

GOVERNMENT OFFICERS, ACTS OF—

1. **Binding effect of.—Construction of sanad.**—*Beng. Reg. VII of 1822, s. 6, cl. 3.*—Where, by a sanad, a grant was made of certain mouzabs, specified as containing an estimated number of bighas, a recognition by the revenue authorities and Civil Courts of the grantee being entitled to forest land as part of that grant, although much exceeding the estimated area, was held to be binding on Government, and not to be an error within the meaning of Regulation VII of 1822, section 6, clause 3. **ZAHUR-UDDIN v. COLLECTOR OF GORUCKPORE**

[4 B. L. R., P. C., 36; 13 W. R., P. C., 31]

2. **Special Commissioner.—Decree under Act IX of 1859 directing officer to put party in possession.**—Where, by a decree of the special Commissioner's Court established under Act IX of 1859, a decree was made directing property to be made over to a claimant, the proceedings of officials making over that property were, when followed by a suit against Government to obtain possession of a portion of that property, in which suit the Government raised no question as to the propriety of the decree, or of the making over of the bulk of the property under it, held to bind the Government as to the right of the decree-holder to the property. **SECRETARY OF STATE v. KHANZADI**

[5 B. L. R., P. C., 312]

3. **Ratification by Government.—Excess of authority.**—The acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or, if he exceed that authority, when the Government in fact or in law, directly or by implication, ratifies the excess. **COLLECTOR OF MASULIPATAM v. CAVALY VENKATA NAMAINAPAH**

[2 W. R., P. C., 61; 8 Moore's I. A., 529]

GOVERNMENT PLEADER.

Officer prosecuting case, Duty of.—Discrepancies of witnesses for prosecution.—It is the duty of the Government pleader or other officer, who conducts the prosecution before the Court of Sessions, to point out to the Court any glaring discrepancy between the evidence being given by a witness before the Court of Sessions and that previously recorded by the committing officer. **QUEEN v. GONDEHA MOONDA**

[20 W. R., Cr., 38]

GOVERNMENT PROMISSORY NOTE.

See **DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.**

[I. L. R., 2 All., 756]

See **GIFT** . . . I. L. R., 5 Bom., 268

See **LACHES** . . . 18 W. R., 58

GOVERNMENT PROMISSORY NOTE— continued.

1. ———— **Renewal of note.—Loss of negotiability by note becoming covered with endorsements.—“Allonge.”**—In a suit by a Hindu widow as the holder and last endorsee of a Government promissory note of the 5½ per cent. loan, 1859-60, to enforce renewal of the note, it appeared that in the advertisement of the loan in the *Gazette*, it was stated that “the practice and rules heretofore in use in regard to the renewal, &c., of promissory notes will be adhered to in respect of the promissory notes of this loan;” that it was the practice of the Government to insist on the production of the promissory note when the interest due on it was applied for, and to endorse the payment of such interest on the back of the note; that the note of which renewal was sought had in consequence become so covered with endorsements that a slip of paper had been attached to it by the Government for the purpose of allowing further endorsements on payment of interest to be made; and that in consequence of having this paper attached, and being covered with endorsements, the note was practically unnegotiable. The defence was that the Government had a discretion as to granting or refusing renewal, and had, on objection made by the reversioners, exercised that discretion in refusing to renew the note. The lower Court dismissed the suit on the ground that the plaintiff had failed to show any legal right to renewal against the Government. *Held* on appeal that the practice of insisting on endorsement of payments of interest on the note as a preliminary to receipt of interest thereon having rendered it practically unnegotiable, the Government were bound to renew the note. **MOHMOHINER DEBI v. SECRETARY OF STATE**
[13 B. L. R., 359: 22 W. R., 106]

2. ———— **Theft of note.—Purchaser, Rights of.—Title.**—In the month of October 1878, a Government promissory note for ₹10,000 was sent from the A. treasury to the Public Debt Office for encasement. The note was duly received at the office, and its receipt was entered in the proper book. The business of the Public Debt Office is carried on by certain officers of the B. Bank. The note was stolen from the office, and endorsed over by the thief to a person who sold it to C. for full value. The note bore two blank endorsements prior to that of the thief. In the same month C. applied to the B. Bank for a loan, which the Bank agreed to make upon the security of C.’s promissory note, and the deposit of Government notes. The form of application for the loan specified by their numbers the notes which were to be deposited. One of these was the stolen note. Before finally agreeing to the advance, the officers of the Bank in charge of the Loan Department sent the application, showing the numbers of the notes, to the Public Debt Office, and received it back with a memorandum upon it to the effect that the notes were not stopped. On the 23rd October the loan was made, and the securities were given. Shortly afterwards the theft was discovered, and the note was stopped. In November the Bank, at the request of C., sent the note to the Public Debt Office for payment of interest, and the note was detained by the Superintendent. The Bank

GOVERNMENT PROMISSORY NOTE —Theft of note—continued.

then required C. to repay the amount of his loan. This he refused to do unless all his securities were handed over to him. In a suit by the Bank against C. upon his promissory note, —*Held*, that he was not entitled to refuse payment until the stolen note was given up to him. *Per GARTH, C. J.*—The Public Debt Branch of the B. Bank is as much a Government office as if it were carried on separately under the management of Government officers. The note was, therefore, stolen whilst virtually in the hands of the Government, and was, when detained [by the Superintendent of the Public Debt Office, held by him as the agent of the Government on behalf of the true owner at the time when it was stolen, and the Bank had no right or power to take it in their private capacity out of the hands of the Public Debt Office. When an instrument, such as the note in question, has been stolen, the person from whom it was stolen has a good title to it, not only as against the thief, but as against any person who subsequently becomes the holder, unless such person can prove that the instrument had become negotiable at the time it was stolen, and that he had obtained it *bona fide* for value without notice of the theft. In this case the note was stolen whilst in the custody of the Public Debt Office before C. had any title to it. The Bank, therefore, as agents for the Government, on behalf of the true owner, from whom and on whose behalf they received it, had *prima facie* a better title than the thief or any one claiming through him, and C., in order to rebut that *prima facie* case, would have to show that he was a *bona fide* holder for value. In order to do so he would have to prove that the note at the time when it was stolen was a negotiable instrument, and this he had failed to do, as he had not proved that the endorsements prior to that of the thief were genuine. **BANK OF BENGAL v. MENDES** . I. L. R., 5 Calo., 654: 5 C. L. R., 536

3. ———— **Right of Hindu widow with certificate to negotiate notes.**—A Hindu widow holding a certificate under Act XXVII of 1860 to collect debts due to the estate of her deceased son, who had been allowed to draw interest on certain Government promissory notes, which, though entered in the certificate, stood apparently in the name of her late husband, having applied for authority to negotiate those promissory notes, —*Held* that she was bound to show how she got possession of those notes. **IN THE MATTER OF THE PETITION OF BIDYA SOONDURAN DOSSEN** . 15 W. R., 267

GOVERNMENT RIGHTS, RELEASE OF—

See CONFISCATION OF PROPERTY IN
ODISH . I. L. R., 4 Calo., 727

GOVERNMENT SECURITIES, SALE OF—

See CONTRACT—CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES.

[I. L. R., 9 Calo., 791
Cor., 1: 2 Hyde, 121]

GOVERNMENT SECURITIES, SALE OF—continued.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R., 9 Calc., 791

GOVERNMENT SOLICITOR, PERSON APPOINTED BY, TO ACT AS PROSECUTOR IN POLICE COURTS.

See PUBLIC SERVANT.

[I. L. R., 3 Calc., 497]

GOVERNOR OF BOMBAY IN COUNCIL.

1. ——— Powers of Legislature.—*Jurisdiction of Courts in mofussil.*—*Course of legislation.*—The Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the Courts in the mofussil established by the local Legislature, and such Acts are not void because their indirect effect may be to increase or diminish the occasions for the exercise of the appellate jurisdiction of the High Court. The policy of Government, as shown in its course of legislation of recent years with reference to judicial institutions, as compared with its policy at the time when the Elphinstone Code was passed, reviewed. *PREMSHANKAR RAGHUNATHJI v. GOVERNMENT OF BOMBAY* [8 Bom., A. C., 195]

2. ——— Power to make laws.—*Laws affecting authority of High Court.*—The Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the High Court in dealing with them when made. *COLLECTOR OF THANA v. BHASKAR MAHADEV SHETH . . . I. L. R., 8 Bom., 264*

GOVERNOR OF MADRAS IN COUNCIL.

——— Power of, to pass Act affecting Imperial Statute.—It is beyond the power of the local Legislative Council to pass an Act in any way affecting the provisions of a Statute of the Imperial Parliament. *ABOO SAIT & Co. v. ARNOTT. ABOO SAIT & Co. v. DALE . . . 2 Mad., 439*

GRANT.

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| 1. CONSTRUCTION OF GRANTS . . . | 2052 |
| 2. POWER TO GRANT . . . | 2058 |
| 3. GRANTS FOR MAINTENANCE . . . | 2061 |
| 4. POWER OF ALIENATION BY GRANTER . . . | 2062 |
| 5. RESUMPTION OR REVOCATION OF GRANTS . . . | 2063 |

See CASES UNDER PENSIONS ACT, 1849 AND 1871.

See CASES UNDER PRESCRIPTION.

——— by Government.

See PENSIONS ACT, 1871.

[I. L. R., 1 Bom., 75]

GRANT—continued.

See SANAD . I. L. R., 4 Bom., 643
[8 Bom., A. C., 101
I. L. R., 1 Bom., 523]

——— by wife in absence of husband.

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.
[I. L. R., 4 Calc., 327]

——— free of revenue.

See PENSIONS ACT, 1871, s. 4.
[I. L. R., 1 Bom., 75
I. L. R., 7 Mad., 191]

——— in lieu of maintenance.

See RESUMPTION—RIGHT TO RESUME.
[22 W. R., 225
I. L. R., 3 Calc., 793
I. L. R., 5 Calc., 118]

——— political pension in lieu of—

See PENSIONS ACT, 1871.
[I. L. R., 2 Bom., 346]

——— prior to Permanent Settlement.

See GHATWALI TENURE.
[I. L. R., 3 Calc., 251]

See ONUS PROBANDI—RESUMPTION AND ASSESSMENT . I. L. R., 3 Calc., 501

——— of land for building.

See CANTONMENTS.
[I. L. R., 3 All., 669
I. L. R., 6 All., 148]

——— of land revenue.

See PENSIONS ACT, 1871, s. 4.
[I. L. R., 4 Bom., 437
I. L. R., 5 Bom., 408
I. L. R., 6 Bom., 209, 737
I. L. R., 2 Bom., 99]

1. CONSTRUCTION OF GRANTS.

1. ——— Grant of freehold.—*Hindu law.*—*Words of inheritance.*—By the Hindu law, no words of inheritance are necessary to pass the freehold interest in land to the heirs. *ANUNDOMOHEY DOSSEE v. DOE D. EAST INDIA COMPANY* [4 W. R., P. C., 51
 8 Moore's L. A., 43]

2. ——— Omission of words of inheritance.—*Stipulation for retention rent-free.*—A zemindar on giving up a four-anna share which he had theretofore held, but had mortgaged, stipulated for the retention of the holding in suit rent-free for maintenance. *Held* the retention of the holding was intended not only for the benefit of the proprietor himself, and to inure during his life only, but also for the benefit of his heirs. Words of inheritance are neither necessary nor customary in such

GRANT—continued.**1. CONSTRUCTION OF GRANTS—continued.****Omission of words of inheritance—continued.**

cases, and no inference is to be drawn from their absence. *GUNGA DEEN v. LUOHMUN PRESHAD*

[1 N. W., 147: Ed. 1873, 229]

3. ————— *Proof of hereditary nature of grant.*—The absence of words of inheritance in a deed of grant of land is not of itself conclusive to show that such grant was not intended to be in perpetuity; but the hereditary character of the tenure may be inferred from evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son. *GYAN SINGH v. PRETUM SINGH*. 1 N. W., Part 6, p. 73: Ed. 1873, 165

4. ————— *Hereditary tenure.—Transfer of tenure granted.*—*Regs. XIII of 1795 and XXXVII of 1793.*—Grants which are hereditary “nuslan bad nuslan butnun bad butnun” are declared transferable by gift, sale, or otherwise, under the terms of section 15, Regulation XIII of 1795, and section 15, Regulation XXXVII of 1793. *Held* that the grant in this case was not for the benefit of the family, but was confirmed to the grantee’s son only. The family could have no other claim upon him than a natural obligation to help them, and their title to succeed to the grant could only accrue in regular succession. *BITHUL BHAT v. LALLA RAJ KISHORE*

[2 Agra, 284]

5. ————— *Mafee birt tenure.*—Whatever the words “mafee birt tenure” may have imported originally, the *prima facie* meaning of the words has come to be an hereditary tenure. *MAHENDRA SINGH v. JOKHA SINGH*. 19 W. R., P. C., 211

6. ————— *Meaning of “talook.”*—Where the word “talook” occurs in a grant without any sort of qualification and restriction, it refers *prima facie* to a hereditary interest. *ASSANOULLAH v. KALEH MOHUN MOOKERJEE*

[18 W. R., 469]

KRISHNO CHUNDER GOOPFO v. SUFDUR ALI

[22 W. R., 326]

7. ————— *Ambiguity in document explained by reference to another document.—Ambiguity in date.*—In a suit to recover possession of immoveable property under a grant from the Raja of P. on the ground that the grant was prior in time to the grant from the same grantor under which the defendants professed to hold, it was found that the plaintiff’s grant was dated “25th Falgoun in the year 16.” *Held* that the meaning of the words “in the year 16” might, for the purpose of showing it to be a document more than 30 years old, be shown by reference to another grant signed by the same officer, from which it appeared that the “year 37” meant the 37th year of the Raja of P., and that it corresponded with 1186 B. S. *EQUITABLE COAL COMPANY v. GONESH CHUNDER BANERJEE*

[9 C. L. R., 276]

8. ————— *Inaam-i-altamgha grant.—Grants for religious and charitable purposes or for*

GRANT—continued.**1. CONSTRUCTION OF GRANTS—continued.****Inaam-i-altamgha grant—continued.**

rendering military services.—A grant in *inaam-i-altamgha* to N. and his children, “and their descendants in lineal succession, for generation after generation, in perpetuity and for ever,” which was unburdened with any condition as to prospective service, and free from any religious, charitable, or other trust, held to confer an alienable estate. Grants of land revenue for religious and charitable purposes, or for the future condition of civil or military service of the estate considered and to some extent classified; and the enactments and authorities, historical and legal, relating to the question of their alienability, mentioned. *KRISHNARAY GANESH v. RANGRAV*

[4 Bom., A. C., 1]

9. ————— *Grant for service performed.—Jaghir.—Sanad.—Alienation.—Sale.*—On the 22nd of September 1830, the British Government made a grant to A. B. in the following terms: “In consideration of the active and zealous performance of the duties entrusted to him by Government, the Honourable the Governor in Council hereby gives and bestows upon A. B., son of D., and his heirs for ever, as jaghir, the following four villages: Bheetan and Sonari in the Choras Pargana, Kumwada and Boriach in the Chikhli Pargana, in the zilla of Surat, with the jama and moglai of the same—now yielding an average net sum of rupees two thousand nine hundred and ninety-two, one quarter, and ninety-six reas. The revenue of the said villages hereafter, whether more or less, to be collected by the said A. B. and his heirs from the 5th of June, 1830, and such lawazims or haks as are at present settled on those villages are to be disturbed by the said A. B. in the same manner as heretofore.” *Held*, having regard to the language of the grant and to the object with which it was made, *viz.*, to reward the past services of the grantee, that the introduction of the words “as jaghir” was not intended to control the right of alienation inherent in the operative terms of the grant. *DOSIBAI v. ISHVARIDAS JAGJIVANDAS*

[1 L. R., 9 Bom., 561]

10. ————— *Grant for an indefinite period.—Interest of grantor in property.—Duration of grant.—Rules of construction.*—The rule of construction that a grant made to a man for an indefinite term inures only for the life of the grantee and passes no interest to his heirs, does not apply in cases where the term can be definitely ascertained by reference to the interest which the grantor himself has in the property, and which the grant purports to convey. *LEKHAJ ROY v. KUNHYA SINGH*

[1 L. R., 3 Cal., 210: L. R., 4 I. A., 233]

11. ————— *Grant for particular purpose.—Building.—Forfeiture.*—A. received from B. the use of his ground rent-free, which he thus acknowledged in writing: “Building a house thereon, I shall enjoy so long as I and my kinsmen live therein. I shall have no right to sell the ground to another.” A house was built on the site and inhabited by A. and his heirs for several years, until

GRANT—continued.**1. CONSTRUCTION OF GRANTS—continued.****Grant for particular purpose—continued.**

it was destroyed by fire, when the heirs commenced to build a new house upon a portion of the ground, having leased another portion of it for building upon, and having mortgaged the whole of it. *Held* that the heir of *B.* was entitled to recover possession of the ground, as the conditions of the grant had not been observed, and that the word "sell" must be construed as prohibiting alienation of any kind. **BALAJI J. RAHALKAR v. NARAYAN BHAT**

[3 Bom., A. C., 63]

12. ——— Grant to one of members of joint family.—*Subjection of, to rights of other members.*—In a suit for division of a village between members of the same family, the defendant alleged that a former division relied upon by the plaintiff was merely nominal, and never intended to be carried out; and also that the village was in 1836 granted to his father for his sole use, and both these allegations were found against defendant, who appealed on the ground that the village, which is inam, was granted to defendant for his sole use in 1857 on the death of his father. *Held* that the grant to defendant was not a new grant, and was subject to the rights of the other members of the family. **NATTAM VENKATABATNUM alias BALAKONDA VENKATA NARAYANA ROW v. NATTAM RAMAIA alias BALAKONDA RAMA ROW** 2 Mad., 470

13. ——— Limited grant.—Prescriptive right of inamdars to recover from shilatriddars the revenue formerly paid by latter to Government.—Government, by an indenture, dated 25th January 1819, conveyed to *A.* and *B.* and their heirs and assigns certain villages in the Island of Salsette with the exception of such spots of shilatri tenure as might be therein or on any part thereof which could only become the property of *A.* and *B.* on their purchasing the same from the proprietors. Since 1819 the holders of these shilatri lands had paid to the grantees and their heirs assessment (or rent) at a fixed rate which before the grant they used to pay to Government. In a suit brought by an heir of *A.* and *B.* in 1868 to recover an enhanced rent or assessment levied on these lands, *Held* that though the language of the exception was so large that it might have been construed to exclude any right on the part of the grantees to receive rent (or revenue), yet that as the defendant or his predecessors had, ever since 1819, paid to the plaintiff and his predecessors the revenue paid before that time to Government, that revenue passed under the indenture of 1819 to the grantees in the deed. **DADABAI JAHANGIRJI v. RAMJI BIN BHAV** 11 Bom., 162

14. ——— Grant of mortgaged villages.—*Provision for grant of others in case of redemption.—Implied confirmation of father's grant by son.*—In 1846, *A.* granted a pottah of a certain village, which had been mortgaged to him, to his illegitimate son *B.*, promising, in the event of the mortgagor redeeming the estate, to make over to *B.* in lieu of the village granted other villages yielding an equal revenue, and in 1847 confirmed the grant, mak-

GRANT—continued.**1. CONSTRUCTION OF GRANTS—continued.****Grant of mortgaged villages—continued.**

ing it rent-free. On *A.*'s death the grant made by him was confirmed by his legitimate son, the appellant, in certain pottahs, in which, however, no reference was made to the provision in the earlier grant by the father for the substitution, in the event of the mortgagor redeeming, of villages yielding an equal revenue. After the passing of Act XIII of 1866 the mortgagor obtained a decree for redemption and ousted *B.* *Held* by the Privy Council that the appellant was bound by his father's agreement in the pottah of 1846 to make over to *B.* villages yielding a revenue equal to that of the village which had been redeemed. **BIJAI BAHADOOR SINGH v. BRYNOR BUX SINGH** 6 C. L. R., 21

15. ——— Implied grant when intention to grant is not completed.—*Intention to give further deed of grant.*—Where a piece of land is held partly by a permanent lease and partly by an amulnama, granted almost simultaneously and intended eventually to be changed for a lease, and thereupon the whole piece of land is thrown into one compound, and occupied, and new buildings are erected thereupon with the consent of the lessor, and there is no failure on the part of the lessee to comply with the terms of the grant, *Held* that the permanent grant was to be impliedly extended to the entire premises in question, notwithstanding that no lease was formally granted with respect to the remaining portion as originally contemplated. **PUDDOMONNE DOSSER v. DWARKANATH BISWAS** . 25 W. R., 335

16. ——— Grant by zemindar.—*Mad. Reg., 1802, XXV, s. 3.—Inam.—Tenancy not determinable at will of grantor's successor.*—Regulation XXV of 1802, section 3, imposes restrictions on alienations only to secure the interests of the public revenue, and under it the zemindar has no power to disturb grants otherwise valid made by his predecessor, or titles to inams acquired by prescription. An inam, existing under a grant made in 1811, became in 1863 the subject of arrangement between the zemindar, who had succeeded the grantor in the zemindari, and the inamdars. This resulted in what was either a confirmation of the original grant on terms more favourable to the zemindar, or a new grant of an estate in all respects, save as to the rent, similar to the previously existing estate, which was a tenancy in perpetuity. Subsequently the son and successor of the grantor of 1863 claimed to have determined the tenancy by a notice to quit. *Held* that it was not determinable by such notice. **MAHARAJA OF VIZIANAGRAM v. SURYANARAYANA**

[1 L. R., 9 Mad., 307
L. R., 13 I. A., 32]

17. ——— Grant from Government.—*Madras Reg. IV of 1831.—Ancient and permanent tenures.*—Regulation IV of 1831, Madras Code, which must be strictly construed, applies only to suits brought to try the validity of grants emanating from, or confirmed or affected by, the direct act and order of the Governor in Council. A written order under that law is not necessary in a suit brought by

GRANT—continued.**1. CONSTRUCTION OF GRANTS—continued.****Grant from Government—continued.**

a person who claims to hold under an ancient and permanent tenure in existence before the Dewany.
BRETT v. ELLAIYA

[12 W. R., 33; 13 Moore's I. A., 104]

18. — Grant in saranjam.—Jaghir.—
Grant of revenue.—Grant of soil.—Pensions Act, XXIII of 1871.—Evidence.—Burden of proof.—Impartibility.—Primogeniture.—The grant in jaghir or saranjam is very rarely a grant of the soil, and the burden of proving that it is in any particular case a grant of the soil lies very heavily upon the party alleging it. It is for the Government to determine how saranjams are to be held and inherited, and in cases where the Civil Courts have jurisdiction over claims relating to saranjams, in consequence of the non-applicability of the Pensions Act, XXIII of 1871, or otherwise, they would be bound to determine such claims according to the rules, general or special, laid down by the British Government. In the absence of such rules the Courts would be guided by the law applicable to impartible property. *Semble*,—That a saranjam is impartible, and on the death of the eldest son descends to his son in preference to his surviving brother. **RAM CHANDEA MANTRI v. VENKATRAO MANTRI** . . . I. L. R., 6 Bom., 598

19. — Grant of zemindari lands.—
Hereditary mokurrari tenure.—Death of grantees without heirs.—Escheat.—Lands belonging to a zemindari granted by the zemindar under an absolute hereditary mokurrari tenure, do not, on the death of the grantees without heirs, revert to the zemindar; nor does the zemindar, under such circumstances, take by escheat a tenure subordinate to and carved out of his zemindari. Where there is a failure of heirs, the Crown, by the general prerogative, will take the property by escheat, subject to any trusts or charges affecting it; and there is nothing in the nature of a mokurrari tenure which should prevent the Crown from so taking it subject to the payment of the rent reserved under it. **SONET KOOR v. HIMMUT BAHADOOR**

[I. L. R., 1 Calc., 391; 25 W. R., 239
 I. R., 3 I. A., 92]

20. — Rent due to zemindar.—Maganam in hands of separate persons.—Apportionment of rent.—Madras Reg. XXV of 1802, s. 9.—The rent due to a zemindar from the grantees of a maganam or division of the zemindari is not a charge upon the maganam. It is a debt due to the zemindar, and nothing more. When the zemindar instituted the suit for rent the maganam was in the possession of third parties, who had become owners of different portions of it by purchase. The zemindar sought to make all of them jointly and severally liable for the entire amount of rent due to him. The lower Court apportioned the rent upon the several villages in the hands of the purchasers. —*Held* that in the absence of a subdivision under section 9 of Regulation XXV of 1802, the apportionment might not be binding upon the Government, but it did not follow that it might not be good

GRANT—continued.**1. CONSTRUCTION OF GRANTS—continued.****Grant of zemindari lands—continued.**

as between the parties to the suit, and that there was no foundation for the contention that the purchasers were jointly and severally liable for the rent fixed upon the whole maganam. **ZEMINDARI OF RAMNAD v. RAMAMANY AMMAL** . . . I. L. R., 2 Mad., 234

21. — Grant of zemindari land rent-free.—Beng. Reg. XIX of 1793.—Regulation XIX of 1793 refers to grants to hold land free of revenue, not to grants made by a private individual free of rent. A party holding under a joutuck grant from a zemindar containing no reservation of rent is entitled to hold rent-free. **KAMESHURIE DASSEE v. COURT OF WARDS** . . . 12 W. R., 251

2. POWER TO GRANT.

22. — Grant of rent-free tenure.—Jaghirs.—Power before Permanent Settlement.—A zemindar had no power before the Permanent Settlement to grant a rent-free tenure, or a tenure at a less rent than the share of the produce payable to Government for revenue; nor had he power to grant jaghirs. **NILMONEY SINGH v. GOVERNMENT**

[6 W. R., 121]

S. C. on appeal to Privy Council . 13 W. R., 321

23. — Reg. XIX of 1793, s. 10.—Grant for public purposes.—Rent.—Revenue.—A zemindar in 1830 granted rent-free 22 bighas of land out of his zemindari to A., who was to make a tank, the use of which was to be devoted to the public. In February 1862, a successor to the grantor in the zemindari sought to resume the land, on the ground that the original "rent-free" grant was null and void, it having been made without the sanction of Government. *Held per NORMAN, PUNDIT, and LEVINGE, JJ.* (TREVOR and LOCH, JJ., dissenting), such a grant was valid. It was not within the meaning of Regulation XIX of 1793, section 10. "Rent to the zemindar" and "Revenue of Government" distinguished. **PIZIBUDDIN v. MADHUSUDAN PAL CHOWDHRY**

[B. I. R., Sup. Vol., 75; 2 W. R., 15]

Overruling **HURENHARAIN GOSSAIN v. SHUMBOO-NATH MUNDLE** . . . 1 W. R., 6

24. — Beng. Reg. XIX of 1793, s. 10.—Resumption.—Rent.—Revenue.—Held per PHACOCK, C. J., and L. S. JACKSON and MACPHERSON, JJ. (BAYLEY, NORMAN, and SETON-KARR, JJ., dissenting)—The words "exempt from revenue" in section 10, Regulation XIX of 1793, refer only to grants free from the payment of revenue to Government, and do not include grants or leases by a zemindar exempt from the payment of rent. Therefore a rent-free grant made by a zemindar, and *a fortiori* one by a maurasi ijaradar, of a specific portion of land after a permanent settlement of the estate to which it belongs, is valid as against the grantor and his heirs or against a purchaser of the estate by private sale, and is not liable to be resumed under that section. *Held per* BAYLEY, NORMAN, and

GRANT—continued.**2. POWER TO GRANT—continued.****Grant of rent-free tenure—continued.**

SRON-KARR, JJ., contra, MAHOMED AKIL v. ASAD-UNNISSA BIBI. MUTTILALL SEN GWYAL v. DESH-KAR ROY . B. L. R., Sup. Vol., 774: 9 W. R., 1

25. ———— Effect of grant against auction-purchaser.—A. certain quantity of seer land was given by a Mahomedan zemindar to his daughter, on the occasion of her marriage, to be held by her as seer,—that is to say, free from payment of rent, but not free from payment of revenue. *Held* that a zemindar was competent to make such grant, and his act is binding on the auction-purchaser, whose right is only to receive the revenue-rate from the grantee. **ABMUD OOLLAH v. MITHOO LALL [3 Agra, 186**

26. ———— Grant for public purposes.—*Liability to abatement of rent.*—A grant for a road used annually for the Rath Jatra is valid and not assessable with rent, the grant being for a public purpose. **HUREENABAIN GOSSAIN v. SHUMBOO NATH MUNDUL . . . 1 W. R., 6**

27. ———— Tank granted subsequent to 1790.—A tank granted subsequently to 1790 is liable to resumption in the absence of proof of its having been either the condition of the grant or the intention of the grantor that the tank should be a public benefit. Such a case does not come within the ruling of the Full Bench in *Pisir-uddin v. Muddusoodun Pal Chowdhry, B. L. R., Sup. Vol., 75. JUDOOONATH SIRCAR v. BONOMALNE MITTER . . . 2 W. R., 295*

CHUNDER KANT CHUCKERBUTTY v. BUNKOO BHARRN CHUNDER . . . 3 W. R., 177

28. ———— Supply of water to villagers from wells to be dug.—Building temples.—*Power to resume and assess grant.*—Where the manager of a Coal Company had allowed persons to settle on the lands of the Company, on conditions about which a dispute arose, and the Company sought to assess the land with rent, and the tenants claimed to hold it rent-free,—*Held* by the High Court that in the case of one plot on which the tenant had agreed to dig wells and had done so, the water which the villagers on the Company's estate drew from the said wells was in the nature of a fair consideration for the land; and that, though the land was assessable with rent, the Company could not assess it so long as the villagers were supplied with water. In regard to another plot, however, in which some temples had been erected,—*Held* that the temples did not in any way further the objects of the Company, and could not be treated as fair consideration, and that the Company could assess the plot. **BENGAL COAL COMPANY v. HURDYAL MARWARAN . 25 W. R., 245**

29. ———— Grant of land rent-free.—*Beng. Reg. XIX of 1793, s. 10.—Reg. XLI of 1795, s. 10.—Act XVIII of 1873, ss. 80, 95.—Act XIX of 1873, s. 79.*—The plaintiff in this suit claimed the possession of certain land in virtue of a grant thereof to him, not merely of the proprietary right in such land,

GRANT—continued.**2. POWER TO GRANT—continued.****Grant of land rent-free—continued.**

but of the rents of the same undiminished by the payment of the revenue assessed thereon, which the grantor took upon himself to pay. *Held* by **STUART, C. J., PRABSON, J., and OLDYIELD, J.,** that the grant was null and void and liable to resumption, with reference to section 10 of Regulation XIX of 1793, and Regulation XLI of 1795, and section 80 of Act XVIII of 1873, and section 79 of Act XIX of 1873. *Per SPANKIE, J.*—That the question whether the grant was null and void with reference to those Regulations and Acts did not arise, as the grant, on the facts found by the Court below, was not one within the terms of those Regulations. **JAGANNATH PANDAY v. PRAG SINGH . . . I. L. R., 2 All., 545**

30. ———— Beng. Reg. XIX of 1793, s. 10.—Act XVIII of 1873, ss. 80, 95 (c).—Act XIX of 1873, ss. 79, 241 (b).—The plaintiffs in this suit, zemindars of a certain village, sued for the possession of certain land in such village, alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village watchman, and the defendant had ceased to perform those duties and was holding as a trespasser. The defendant set up as a defence to the suit that he and his predecessors had held the land rent-free for two hundred years, and that he held it as a proprietor. *Held* that such assignment was not a grant within the meaning of Regulation XIX of 1793. **PURAN MAL v. PADMA [I. L. R., 2 All., 732**

31. ———— Hereditary grant, Presumption of.—*Allowance.*—*Long enjoyment.*—*Title.*—*Bom. Reg. V of 1827, s. 1.*—Where the plaintiff's ancestors had enjoyed an allowance during four successive generations for a period extending over more than a century, the legal presumption, in the absence of the original grant, is that such grant was hereditary. The allowance having been continued, by the British Government to the plaintiff's grandfather, for the same reason for which a village (admitted to be held on hereditary tenure) had been continued, and having been paid to the plaintiff's grandfather up to his decease, and afterwards, as a matter of course, to the plaintiff's father, it was held that the enjoyment of the plaintiff's grandfather and father was proprietary enjoyment; and as this enjoyment had continued uninterruptedly for more than thirty years, that, under Regulation V of 1827, section 1, a statutory and indefeasible title to the allowance had been acquired. **DESAI KALYANRAYA HUKAMATRAYA v. GOVERNMENT OF BOMBAY . 5 Bom., A. C., 1**

32. ———— Hereditary charitable grant.—*Allowance for temple.*—*Bom. Reg. V of 1827, s. 1.*—Where a charitable grant in connection with a temple was proved to have been enjoyed by the incumbent and those under whom he held in regular succession for more than thirty years, it was held that the grantee had acquired a right of property in it under Regulation V of 1827, section 1. *By WARDEN, J.*—Independently of the origin or nature of the grant. *By GIBBS, J.*—In the absence of it being shown to

GRANT—continued.**2. POWER TO GRANT—continued.****Hereditary charitable grant—continued.**

have been a personal grant, and by the conduct of Government in paying to the several generations in succession. **COLLECTOR OF KHERDA v. HARISHANKUR TIKAM** 5 Bom., A. C., 23

3. GRANTS FOR MAINTENANCE.

33. — Nature of tenure.—Resumption and assessment of lands.—In a suit for assessment of rent on certain villages the defendant admitted that the villages formerly belonged to the plaintiff's predecessor, but were given over to them for their maintenance. *Held* that under these circumstances the defendant's tenancy was a mere tenancy-at-will, which the plaintiff's predecessor had a right to determine at any time. **GOVERNMENT v. LALL MOHUN NAUTH** 2 Hay, 136

34. — Grant by Raja of Pachete.—*Duration and effect of such grants.*—A grant by a former Raja of Pachete of a pergunna, part of the zemindari or raj of Pachete, to a member of his family, *held* to be a grant for maintenance only, and resumption was decreed to the Raja in possession. *Semble.*—Grants made by the predecessor of the Raja in possession, whether in fee or for maintenance, inure only during the lifetime of the grantor, and are not binding on his successor. *Quere.*—Whether the zemindari of Pachete constitutes an indivisible estate of inheritance and as such inalienable. **ANUNDLAL SING DEO v. DHENRAJ GURBOOD NARAYAN DEO** 5 Moore's L. A., 82

35. — Duration of maintenance grant.—*Power of zemindar to resume grant for maintenance.*—*Possession of successors of grantees.*—Land held as a maintenance grant is resumable by the zemindar at the death of the grantees whether it is in the hands of more immediate, or in those of more remote, members of the family; the nature of such a grant being to make suitable provision for the immediate members, while it prevents the zemindari from being completely swallowed up by continuous demands. The successors of such grantee, paying rent to the zemindar, cannot be regarded as holding adversely to him. **WOODOY-ADITTO DEB v. MAKOOND NARAIN ADITTO DEB** [22 W. R., 225]

36. — Charge on zemindari.—A maintenance grant, claimed to be hereditary, *held* to be for life only. **Lekraj Roy v. Kunhya Singh**, 1 L. R., 3 Cal., 210, quoted. A maintenance grant which the donor directs to be paid by his agent out of the revenues of a certain zemindari does not form a charge on that zemindari. **BIR CHUNDER MANICKYA BAHADOOR v. ISHAN CHUNDER THAKUR** 3 C. L. R., 417

37. — Value of land enhanced by irrigation.—Where a zemindar granted to his mother, in lieu of maintenance, two villages, the income of which, upon the introduction of irrigation, was greatly enhanced without any expendi-

GRANT—continued.**3. GRANTS FOR MAINTENANCE—continued.****Duration of maintenance grant—continued.**

ture or labour on the part of the grantee,—*Held*, in a suit by the grantee for damages against parties claiming to have been put in possession of the lands of the two villages by the successor of the grantor—(1) that in the absence of express words to the contrary the grant inured for the grantee's life; (2) that as the provision was reasonable the grant was binding on the successor of the grantor; (3) that the introduction of irrigation not having been contemplated at the time of the grant, might entitle the present zemindar to revise and re-adjust the terms of the grant, but was no ground for dispossessing the grantee. **BHAVANAKMA v. RAMASAMI**

[1 L. R., 4 Mad., 193]

38. — Presumption of nature of grant from long undisturbed possession.—Successive enjoyment for three generations, without interference, of land granted by a zemindar to a member of his family in lieu of maintenance, justifies the presumption that the original grant was intended to be absolute. **SALUR ZAMINDAR v. PEDDA PAKIR RAJU** 1 L. R., 4 Mad., 371

4. POWER OF ALIENATION BY GRANTEE.

39. — Survivorship. — Rights of widow.—*Grant by Government for maintenance of family.*—The lands of three brothers having been confiscated, the Government afterwards assigned revenue-paying lands for the benefit, in certain proportions, of the minor son of the eldest brother, also of the widow, minor son, and daughter of the youngest brother (both these brothers being then deceased); and the second brother, who survived, was put into possession of a proportionate part of the property. *Held* by the Privy Council that the widow of the youngest brother, on the deaths of his son and daughter, became by survivorship sole owner of the estate so assigned for their and her benefit; so that an alienation of part if made by her could not be set aside at the instance of the second brother, who failed to show, on the above state of things, that the estate was heritable property of the son, as whose uncle and heir he claimed. **NARPAT SINGH v. MAHOMED ALI HUSSAIN KHAN** 1 L. R., 11 Cal., 1

40. — Alienation by zemindar.—*Validity of, against his successor.*—A grant of a portion of a zemindari by the zemindar in favour of his sister cannot operate independently of her claim to maintenance, so as to bind his successor, though the alienation may be binding as against the grantor during his life. **MALAVARAYA NAYANAR v. OPPAY AMMAL** 1 Mad., 349

41. — Charge in favour of stranger.—*Perpetual annuity.*—A zemindar has no more power to charge a perpetual annuity in favour of a stranger on the income [of the zemindari than he has to alienate the corpus. **NARAYANGA DEVU v. HARISCHANDANA DEVU** 1 Mad., 455

See SUBBARAYULU NAYAK v. RAMA REDDI

[1 Mad., 141]

GRANT—continued.**4. POWER OF ALIENATION BY GRANTEE**
—continued.

42. ——— Grant by holder of appanage.—*Lease for mining purposes.*—Though the holder of a younger brother's appanage has no power of complete and absolute alienation of property, of which he has only a limited tenure for maintenance, still a lease granted by him is good as between him and the grantee and those claiming under the grantor, at least during the grantor's life. Mining leases, like leases for building, are among those which the regulations particularly favour as being in their nature such as to require a long time for profitable working. *GORDON, STUART, & Co., v. TIKAITNEE SOOLAS KOWAREE. W. R., 1864, 370*

43. ——— Grant from person with only temporary interest.—*Failure to prove right of occupancy.*—In a suit to recover possession of debutter land where plaintiff relied upon a mau-rasi pottah which had been granted by or with the permission of a poojaree no longer in office, the principal defendant claiming under a lease from the existing poojaree, *Held* that plaintiff could not succeed, in the absence of evidence of a right of occupancy, under section 6, Act X of 1859, and his title was bad as based upon a grant from a person who had only a limited or temporary interest in the land. *GOOROO PERSHAD ROY v. RAM LOOHUN PAURAY [13 W. R., 241]*

44. ——— Grant by military authorities of cantonment land.—*Resumption by Government.*—Where Government had permitted the military authorities to use certain land for cantonment purposes, which land was subsequently resumed by the Government, *Held* that the military authorities had no power to make a grant of the land given for military purposes for a period longer than the land would remain in their possession, and that no term of limitation had expired to bar the ordinary right of Government as a landlord to demand rent. *RAMCHAND v. COLLECTOR OF MIRZAPUR [3 Agra, 7]*

5. RESUMPTION OR REVOCATION OF GRANTS.

45. ——— Mokurarri grant in perpetuity.—*Right of resumption in grantor.*—A mokurarri tenure granted in perpetuity cannot be resumed by the grantor, even if the grantee dies without leaving heirs. *HIMMUT BAHADUR v. SOONEET KOORE. 15 W. R., 549*

46. ——— Grant of mokurarri pottah.—*Power to resume on death of grantor.*—A mokurarri pottah granted by a Raja of Tipperah to a member of his family is, by recognised custom, resumable on the death of the grantor. *ROOF MOONJUREE KOOREE v. BEER CHUNDE JOBBRAJ [9 W. R., 308]*

47. ——— Amaram grant.—*Right to resume.—Arrears of assessment, Liability for.*—An amaram grant is resumable at the pleasure of the

GRANT—continued.**5. RESUMPTION OR REVOCATION OF GRANTS—continued.****Amaram grant—continued.**

zemindar. The grantees of such a grant, when resumed, if they remain in possession without payment of the assessment which they are lawfully bound to discharge, are liable to be sued for such arrears of assessment. *UNIDI RAJAH RAJI VENKATAPERUMAL RAUZE v. PEMMASAMY VENKATADRY NAIDOO [4 W. R., P. C., 121; 7 Moore's I. A., 128]*

48. ——— Annual allowance for palki huq.—*Allowance attached to hereditary office.—Right of Government to resume.*—An annual allowance for palki huq (palanquin allowance) to the holder of the hereditary office of Desai of Broach held under a jaghir grant charged by former native Governments in the land revenues of that pergunnah, is incident to the tenure of Desai and is not resumable by Government. *GOVERNMENT OF BOMBAY v. DESAI KALLIANRAI HAKOOMUTRAI [14 Moore's I. A., 551]*

49. ——— Grant by Government by proclamation.—*Revocation of, by proclamation.—Consent.—Resumption, Power of.*—Government cannot, by issuing a subsequent proclamation, resume a grant made by a previous proclamation, inasmuch as it cannot, any more than a private person, without the consent of the donee, revoke a gift actually made. *COLLECTOR OF RATNAGIRI v. VYANKATRAY NARAYAN SURVE. 8 Bom., A. C., 1*

50. ——— Construction of gift.—*Tribal custom.—Evidence of intention.*—In view of the circumstances under which an oral lease of villages at a favourable rate of rent, and of indefinite duration, was made by the proprietor, a talukdar, in favour of her daughter, it was held not to be a lease for life, but to be resumable at the lessor's pleasure. The parties belonged to a tribe (Ahban) appearing to be Mahomedan, but in regard to inheritance and maintenance, having customs of its own, which permitted the resumption. There was no evidence of the lessor's intention contemporaneous with the making of the lease; but her will, executed within two years after and made known to the Government to show the future succession to the taluk, contained a bequest of the same villages to the lessee, with express reservation of power to alter this disposition. *Held* that this was evidence bearing on the question of intention. *NAJBAN BIBI v. CHAND BIBI [1 I. L. R., 10 Calc., 238; 13 C. I. R., 401]*

I. L. R., 10 I. A., 138

51. ——— Effect of resumption and settlement on lakhiraj tenures.—*After resumption and settlement a lakhiraj estate becomes, to all intents and purposes, a separate zemindari held from Government in perpetuity, the proprietors of which are, in accordance with the Full Bench ruling of the 14th December 1867—Mahomed Akil v. Asadunisa Bibi, B. L. R., Sup. Vol., 774 (9 W. R., 1)—capable of granting portions rent-free; the grantor taking such land, with the risk of losing it again, in the event of the whole estate being sold for default*

GRANT—continued.**5. RESUMPTION OR REVOCATION OF GRANTS—continued.**

Effect of resumption and settlement on lakhiraj tenures—continued.

on the part of the zemindar. *DABEN PRESHAD v. JOY LALL CROWDREY* . . . 12 W. R., 361

52. ——— Grant by Hindu Sovereign to Hindu temple.—*Nibandha*.—*Antastha Sadilvar*.—*Kherij Jamabandi Parbhare Paiki*.—Religious penalty for resumption.—The Peishwa, by a sanad, dated 1790, granted to an ancestor of the plaintiffs, for the support of a Hindu temple, an annual cash allowance of Rs50 out of the "Antastha Sadilvar" and three khandis of rice out of the "Kherij Jamabandi Parbhare," to be levied from certain mahals and forts mentioned in the sanad. The allowances were paid till the death of the plaintiffs' father on the 26th December 1859, when the Collector of Thana stopped them. On the 23rd December 1870, the plaintiffs sued to establish their right to the grant and to recover six years' arrears of the allowances. *Held* that the grant was irrevocable, inalienable, and perpetual. It was not a grant from the revenues of the State at large or even of the zilla, but was made up of certain small special grants charged upon the Antastha Sadilvar, produced by certain special localities in the zilla. Thus the grant was essentially localised, and whatever there might have been of contingency or variability in the levy or application of the Antastha Sadilvar previously to the making of the grant, such contingency or variability ceased to the extent of the grant from the moment of its being made to a Hindu temple. The religious penalty for the resumption of a royal grant made for Hindu religious purposes is sometimes expressed in the grant and sometimes omitted from it. But its omission does not in any wise derogate from the durability of the grant. The Hindu law implies the religious penalty for resumption, albeit not expressed in the sanad. A pension or other periodical payment or allowance granted in permanence is *nibandha*, whether secured on land or not. *Quere*.—Whether a private individual as well as a royal personage may create a *nibandha*. *COLLECTOR OF THANA v. HARI SITARAM* . I. L. R., 6 Bom., 546

GRATUITIES, SUIT TO RECOVER, FROM INTRUDER IN OFFICE.

See RIGHT OF SUIT—OFFICE OR EMOLUMENT . I. L. R., 2 Bom., 470

GRATUITY, NON-DELIVERY OF—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.
[I. L. R., 6 All., 634]

GRATUITY ALLOWED BY GOVERNMENT.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.
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GRAZING.

See PASTURAGE, RIGHT TO—

[I. L. R., 2 Bom., 110]

GRIEVOUS HURT.

See CASES UNDER HURT—GRIEVOUS HURT.

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R., 6 All., 131]

I. L. R., 7 All., 414

GROWING CROPS.

See LIMITATION ACT, 1877, ART. 48 (1871, ART. 48) . I. L. R., 4 Cal., 665

See SALE FOR ARREARS OF RENT—UNDER-TENURES, SALE OF—

[I. L. R., 4 Cal., 814]

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVABLE PROPERTY.

[5 B. L. R., 194]

5 Bom., A. C., 90

24 W. R., 394

GUARANTEE.

1. ——— Contract of.—*Statute of Frauds* (39 Car. II.), c. 3, s. 4.—21 Geo. III., c. 70, s. 17.—A contract of guarantee is a "matter of contract and dealing" within the terms of section 17 of 21 George III., chapter 70, and therefore such a contract made by a Hindu is not affected by section 4 of the Statute of Frauds. *JAGADAMBA DASI v. GROB*

[5 I. L. R., 639]

2. ——— Appropriation of payments.—*Guarantee on advance to limited company*.—In consideration that the plaintiffs would advance a certain sum to a limited company, two of the directors agreed that the plaintiffs should repay themselves the amount "from the first moneys received by them on account of the said company," and each of them agreed to hold himself personally responsible for the payment of half the amount of any deficiency of the amount realised by the plaintiffs in the manner above described. At this time the plaintiffs were the bankers of the company, and were regularly paying and receiving money for them. The plaintiffs, instead of applying the first moneys coming to their hands in liquidation of the amount advanced under the guarantee, applied such moneys towards the payment of other debts due to themselves from the company. In an action against the executrix of one of the directors,—*Held*, upholding the decision of the Court below, that the plaintiffs, as between themselves and the guarantors, were bound to appropriate the first receipts to the payment of the guaranteed debt; and that as they had not done this, the guarantee was discharged. *NICHOLLS v. WILSON*

[I. L. R., 4 Cal., 560; 3 C. L. R., 361]

3. ——— Custom.—*Trade custom in Beawar*.—*Payments made by arathdars*.—*Ratification*.—By a custom of Beawar, a merchant coming there from another district is allowed to trade only in the name and in the credit of some local *arath* or banking firm which guarantees his dealings, and to which,

GUARANTEE—Custom—continued.

on the conclusion of transactions, a panri, or memorandum thereof, is sent by the stranger-merchant. C. coming to Beawar made several purchases in accordance with the above custom, using the firm of S. & M. as his *orath*. On leaving Beawar, he sent S. & M. a panri, in which all his purchases, except the last and largest, under which he had taken no delivery and had made no payment, were entered. On application by the vendors in the last transaction to S. & M. as guarantors of C. to make good the purchase-money, they at first refused on the ground that the transaction was not entered in the panri sent them, but afterwards they consented to pay the vendors the amount of the loss occasioned by C.'s failure to pay and take delivery. In a suit by S. & M. against C. to recover the amount so paid,—*Held* that if the plaintiffs were cognisant of and allowed their names to be used in the last transaction, as was shown to have been the case in previous transactions, they were, according to the custom, liable to the vendors, and consequently entitled to recover over from the defendant what they had paid; and that even if there was no actual authority given at the time of the transaction, still, as the defendant had used the names of the plaintiffs as his guarantors, and had held them out as liable to pay on his behalf for the goods he purchased, they were thereby authorised, if they thought fit, to make the subsequent payment which they did on behalf of the defendant, or (in other words), to ratify the use which the defendant had made of their name, and were not deprived of their right to do so by their having for a time repudiated liability. *SETH SAMUR MULL v. CHOHA LALL*

[I. L. R., 5 Calc., 421
L. R., 6 I. A., 238]

4. ———— **Condition precedent.—Charter-party.—Damages, Measure of.**—The defendants, M. G. & Co., entered into a contract of guarantee, with the plaintiffs, P. and C. N. C. & Co., which was contained in the following letter: "In consideration of your paying us on account of C., the owner of the ship *Caroline*, chartered by you to load at Rangoon with timber, as per charter-party executed by him and your good selves, dated this day, the sum of Rs21,500, to be paid in advance and in part freight of the said vessel payable as follows: viz., Rs18,000 at Calcutta, and Rs3,500 at Bombay for the disbursement of the vessel there;—we hereby guarantee and engage to hold you harmless against all losses, damages, and consequences arising from the non-performance of any of the acts, covenants, or agreements to be done, kept, observed, or performed by or on the part of the said C. in terms of the said charter-party; and we further agree to allow you interest at the rate of 10 per cent. per annum, to be charged by you for the said advance in the event of its being refunded by us. We also agree to see the voyage performed by the said vessel in full terms and conditions of the said charter-party this day executed by C. in your favour." To this the plaintiffs replied on the same day: "In consideration of your having guaranteed to keep us harmless for the advance made by us to C., owner of the ship *Caroline*, against freight of that vessel, to be earned by her on the anticipated voyage

GUARANTEE—Condition precedent—continued.

from Rangoon to Bombay, with a cargo of timber, as per charter-party executed this day between ourselves and the said C. as per your letter of guarantee dated this day, we hereby agree and engage ourselves to make you over a mortgage-bond on the British barque *Moulmein* of 805 tons, executed in Moulmein by the said C. in favour of N. B. of Rangoon, for certain debts due to him by the said C., duly transferred to you free from N. B.'s claim on the said barque *Moulmein*." The charter-party was of even date, and was made by C. on the one part and the plaintiffs on the other part, and it was thereby agreed that the ship *Caroline*, "being tight, strong, and staunch, and in every way fitted for the voyage, and now at Bombay, shall with all convenient despatch proceed to the port of Rangoon in British Burma, or so near thereto as she may safely get, and there load from the charterer's agents or their order a full and complete cargo of timber," &c., "and being so loaded shall proceed to Bombay," &c., "and deliver the same on being paid freight in the manner below at and after the rate," &c., "the act of God, &c., excepted." The freight to be paid as follows: "Rs18,000 in Calcutta on the signing of this charter-party, Rs3,500 also in advance at Bombay towards defraying the disbursements of the vessel at that port, and the balance to be paid by transfer on account and to credit of N. B. of Rangoon, for money due and owing to him by the said C.," &c. "And the said C. hereby binds himself," &c., "that the said vessel *Caroline* shall be ready to leave Bombay without any delay immediately upon the disbursements being satisfied; and in case she cannot leave the said port of Bombay within such time as shall be considered reasonable, or is otherwise detained either at Bombay aforesaid or at Rangoon, except for or by such causes as the act of God," &c., "then and in such case this charter-party shall be considered null and void, and the said charterers shall be entitled to recover from the said C. his heirs and representatives, the aforesaid sum of Rs21,500, together with interest thereon, calculated from the date hereof, at the rate of 10 per cent. per annum. The charterers to have the option of cancelling their charter-party in the event of the vessel arriving at Rangoon in a disabled state, and the time for repairs to make the ship seaworthy in every respect exceeding twenty-five days. Penalty for non-performance of this agreement, the estimated amount of freight." The plaintiffs were acting on behalf of N. B., and the defendants on behalf of C. during the whole of this negotiation, and C. was at the time largely indebted to N. B. The ship *Caroline* turned out to be unseaworthy, and the charter-party was not carried out. In an action by the plaintiffs against the defendants on the guarantee,—*Held* that the covenant to transfer the mortgage of the *Moulmein* was independent, and not a condition precedent to the plaintiff's right of action. *Held*, also, on the facts, that the representation in the charter-party that the *Caroline* was, while lying at Bombay, "tight, strong, and staunch," &c., amounted to a contract that the ship should be so, and the defendants' guarantee covered it. *Held* also that the defendants not being parties to the charter-party, and not having bound themselves to any assessment

GUARANTEE.—Condition precedent—continued.

of damages, were not called on to pay the penalty specified in the last clause of the charter-party, but that the damages against them must be the actual damages which the plaintiffs on *N. B.'s* behalf suffered in consequence of *C.'s* breach of contract,—that is, *Rs*21,500 paid under the contract, and the balance of freight that would have gone to reduce *N. B.'s* debt and interest on both sums from the date of the contract. The plaintiffs, however, claimed a less sum than these damages would amount to, and therefore the plaintiffs' claim was decreed in full. *PRESTOMJEE DHUNJEEBHAY v. GREGORY*

[1 Ind. Jur., N. S., 412]

5. ——— Surety. — Disclosure. — Material fact. — Contract Act, s. 142.—*M.* was declared the highest bidder at a sale of an abkari farm for three years, and his bid was accepted subject to his furnishing the security required by the conditions of sale. Having failed to furnish security, the farm was re-sold at a loss of *Rs*4,875, and *M.* became indebted to Government in that amount. On the re-sale, *M.* was again declared purchaser, and being unable to furnish the necessary security, *N.* was accepted as his surety for the due fulfilment of the conditions of the lease to be performed by *M.* *N.* did not enquire and was not informed by the Collector as to the debt due by *M.* when he executed the surety bond. *Held*, in a suit to enforce this bond (which was executed before the Contract Act, 1872, came into force) against *N.*, that *N.* was not discharged by reason of the fact that the indebtedness of *M.* was not disclosed to him by the Collector. *SECRETARY OF STATE FOR INDIA v. NILA-MEKAM PILLAI* . . . I. L. R., 6 Mad., 406

6. ——— Intention of parties. — Bond fide endeavour to perform engagement. — Penalty.—When a third person voluntarily consents to incur liability on account of another, and binds himself in a penalty for the due performance of his engagement, the nice technicalities of English law are not applicable, but the real intention of the parties must be looked to. In this case, there having been a *bond fide* endeavour on the part of the respondent fairly to perform his engagement, and there having been a disposition on the part of the appellant to throw obstacles in the way of the performance, in order to obtain payment of the penalty consequent on non-performance, the appeal was dismissed. *RAM GOPAL MOOKERJEE v. MASSHYK*

[2 W. R., P. C., 43; 8 Moore's I. A., 239]

7. ——— Unascertained amount. — Promise to pay debt of another.—A promise to pay a debt of a third person may be binding although the amount may not be ascertained at the time. *PEARSEE LALL SHAHA v. WOOMBESH CHUNDER MOZOOMDAR* . . . 9 W. R., 140

8. ——— Effect of guarantor signing voucher as surety.—Where a surety for the payment of the price of goods sold to another person signs as voucher for them, that fact does not alter his position as surety or make him primarily responsible for them. *AGUILAR v. WOOMBESH CHUNDER SHAW*

[22 W. R., 209]

GUARANTEE—continued.

9. ——— Recommendation to lend money. — Liability to repay.—A mere recommendation by one party to another to lend money to a third party does not operate as a guarantee nor render the first party liable to repay the loan. *JUGGAT INDAR NARAIN ROY CHOWDHREY v. NISTARINE DASSEE* . . . 24 W. R., 446

10. ——— Construction of contract guaranteeing conduct of person employed as agent of the guarantor. — Liability for loss resulting from such agent's misconduct towards his employer.—Upon the construction of an agreement guaranteeing an employer against loss by the misconduct of a person employed as agent of the guarantor, *Held* that the loss, to be recoverable in a suit against the guarantor, must be shown to have arisen from misconduct on the part of the agent in connection with the business of the agency, and to be within the scope of the agreement. The khesanchi of a District Treasury guaranteed the Government against loss arising from the misconduct of the stamp darogah, appointed as his agent. The latter became a party to frauds by putting off upon the public forged stamps, in addition to the genuine ones issued from the Treasury, into which, however, all the proceeds of sales were paid. The darogah, on whose indent the stamps were issued, made the proceeds appear to correspond in his accounts with the value of the stamps issued to him; but, under cover of the above payment, he misappropriated certain genuine stamps. *Held* that although the guarantor might not be responsible in respect of the forgery of the stamps, yet he was responsible on his agreement by reason of the misappropriation of the genuine stamps, and the false accounts rendered; and that losses, which in the first instance were caused by the forgery, were brought within the scope of the agreement by the fact of such misappropriation and false accounting. *SRI KISHNE v. SECRETARY OF STATE FOR INDIA IN COUNCIL*

[I. L. R., 12 Cal., 143
I. R., 12 I. A., 142]**GUARDIAN.**

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GUARDIAN—continued.**ad litem.**

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of child of Christian father and Mahomedan mother.

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[7 B. L. R., Ap, 9

1. APPOINTMENT, &c.

1. ——— Application to appoint guardian.—*Minor.*—Act IX of 1861, ss. 1 and 6.—*Previous application which had been refused.*—A Court is not precluded from entertaining a fresh application for the guardianship of a minor under section 1, Act IX of 1861, by the circumstance that a previous application of the same sort has been refused. *NEHALO v. NAWAL* . . . I. L. R., 1 All., 428

2. ——— *Infant.*—*Power of High Court.*—*Application by petition without suit.*—On an application made on petition without suit for the appointment of a guardian of the person and property of an infant, the Court Receiver was appointed Receiver, and the property was ordered to be handed over to him with liberty to him to sell it and invest the proceeds in Government paper, and the matter was referred to the Judge in chambers for enquiry as to the proper person to be appointed guardian. *IN THE MATTER OF BITTAN* . I. L. R., 2 Calc., 357

3. ——— Guardianship of female minor.—*Mahomedan Law.*—*Beng. Reg. X of 1793, s. 21.*—*Act XL of 1858, s. 27.*—*Act IX of 1861.*—The effect of section 21 of Regulation X of 1793, and of section 27 of Act XL of 1858, is that no person other than a female shall in any case be entrusted with the guardianship of a female minor. *Held*, therefore, where a Mahomedan mother had by marrying a stranger forfeited her right to the guardianship of her children, that in the case of her female children their grandmother was entitled to be appointed guardian to the exclusion of male relatives. And the fact that the proceeding in which the right is

GUARDIAN—continued.**1. APPOINTMENT, &c.—continued.****Guardianship of female minor—continued.**

sought to be established is under Act IX of 1861 does not affect the rule. *FUZZEHUN v. KAJO*

[I. L. R., 10 Calc., 15

4. ——— Guardianship of estate of minor paying revenue to Government.—*Madras Reg. V of 1804, s. 20.*—*Madras Reg. X of 1831, s. 3.*—*Minor.*—*Estate paying revenue to Government.*—*Jurisdiction of District Court.*—A District Court has no jurisdiction under section 20 of Regulation V of 1804 and section 3 of Regulation X of 1831 to appoint a guardian of the estate of a minor when the estate pays revenue to Government. *EX PARTE SUBRAMANYAN* . I. L. R., 6 Mad., 187

5. ——— Guardianship of children of deceased husband.—*Act XV of 1856, s. 3.*—*Re-marriage of Hindu widow.*—On the re-marriage of a Hindu widow, if neither she nor any other person has been expressly constituted by the will or the testamentary disposition of the deceased husband the guardian of the child, and such child has property of his own sufficient for his support and education whilst a minor, such child should ordinarily be regarded as a child "who has neither father nor mother" in the sense of section 3 of Act XV of 1856, and in such a case a proper male relative of the deceased husband should ordinarily be appointed guardian of such child in preference to his re-married mother. *KHUSHALI v. RANI* . . . I. L. R., 4 All., 195

6. ——— Guardianship of minor co-sharers.—*Act XL of 1858.*—*Guardian and minor.*—*Relation of manager of joint estate to co-sharers under age.*—A co-sharer in ancestral family estate, under the Mitakshara law, the co-proprietors being minors, though he may have power to manage the estate, is not in consequence the guardian of such minors for the purpose of binding them by the execution of a bond charging the estate: nor is the eldest male member of the family, being of full age, guardian of such minors for the purpose of defending suits brought against them for money advanced in respect of the estate, unless he has obtained a certificate of administration under Act XL of 1858, section 8. That Act shows that he is not guardian of the minors, the care of whose persons and property (unless taken under the protection of the Court of Wards by section 2) is subject to the jurisdiction of the Civil Courts. *DURGAPERSAD v. KESHOPERSAD SINGH* . I. L. R., 8 Calc., 656: 11 C. L. R., 210 [I. L. R., 9 I. A., 27

7. ——— Guardian ad litem.—*Court is which suit is proceeding.*—Guardians ad litem should always be appointed by the Court in which the litigation is pending. *ANONYMOUS*

[5 Mad., Ap, 3

8. ——— *Appointment of mother where there is not male relative suitable.*—In the absence of a competent and unobjectionable male relative, ready and willing to act as guardian ad litem of an infant, the mother of the infant may

GUARDIAN—continued.**1. APPOINTMENT, &c.—continued.****Guardian ad litem—continued.**

be appointed such guardian, if there be no objection to her on any ground but that of her sex. **IN THE MATTER OF DANAPPA BIN SUBRAY . 1 Bom., 184**

9. ——— Appointment by Judge in default of relative.—Act XL of 1858.—Civil Procedure Code, 1852, s. 443.—If no friend or relative of a minor defendant is willing to take out a certificate under Act XL of 1858, and appear as guardian for the infant, the Judge should appoint an officer of Court, or some respectable nominee or nominees of the minor, guardian to defend the suit. **Babaji bin Kusoji v. Maruti, 11 Bom., 189**; and **Dhombda Lakshman v. Kusa, 6 Bom., 219**, cited and followed. **ISSUR CHUNDER GUPTO v. NORO KRISTO GUPTO . . . 7 C. L. R., 407**

10. ——— Next friend.—Uncle.—Mahomedan law.—The rule of Mahomedan law that an uncle cannot be the guardian of the property of a minor, does not prevent an uncle from representing his infant nephew under the Code of Civil Procedure as next friend in a suit. **ABDUL BARI v. RASH BEHARI PAL . . . 6 C. L. R., 418**

11. ——— Suit against person not appointed guardian by Court.—Neither the Code of Civil Procedure nor the proviso of section 3 of Act XL of 1858 gives a plaintiff any power to institute a suit against a person named by himself as guardian *ad litem* on behalf of a minor, nor when he has done so do they give to the Court the power of transferring, by a mere order made *ex parte*, such an irregular proceeding into a suit against the minor. **GURU CHURN CHUCKERBUTTY v. KALI KISHEN TAGORE . . . I. L. R., 11 Calc., 402**

12. ——— Minors' Act, XX of 1864.—Act XV of 1880, s. 8.—Appointment of guardian ad litem.—Civil Procedure Code, 1877, ss. 456-458.—Costs.—Where no administrator of the estate of a minor is appointed under Act XX of 1864, there is no objection to the appointment of a guardian *ad litem* under section 443 of the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) for the purpose of defending a suit against the minor. Act XX of 1864, section 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX of 1864 nor the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) empowers any Court to appoint a person against his or her will to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of a minor. Section 458 of the Civil Procedure Code (Act X of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. Section 3, clause b, of Act XV of 1880 preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in **Mohun Ishwar v. Haku Rupa, I. L. R., 4 Bom., 638**,

GUARDIAN—continued.**1. APPOINTMENT, &c.—continued.****Guardian ad litem—continued.**

is superseded by Act XV of 1880, section 3, clause b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under section 456 of Act X of 1877, as amended by Act XII of 1879. **JADOW MULJI v. CHEHAGAN RAICHAND**

[I. L. R., 5 Bom., 308]

13. ——— Nazir of Court.—Minors' Act, XX of 1864.—Bombay Civil Courts Acts, XIV of 1869 and X of 1876.—Officer of Government.—Collector.—Public Curator under Act XIX of 1841.—The nazir of a Civil Court, who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of section 32 of Act XIV of 1869, as amended by section 15 of Act X of 1876. An officer of Government, in order to come within those enactments, must be a party to a suit in his official capacity. The only officers of Government whom Act XX of 1864 contemplates as guardians of the estate of a minor in their official capacity, are the Collector of the district and the public curator, appointed as such under Act XIX of 1841. A Subordinate Judge who, under section 456 of the Civil Procedure Code (Act X of 1877, as amended by section 73 of Act XII of 1879), appoints the nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court, has no jurisdiction to hear it and pass a decree against that officer as guardian *ad litem* of the minor. **Trimbak Nimbaji v. Shieram, I. L. R., 4 Bom., 642**, note, followed. **MOHAN ISHWAR v. HAKU RUPA**
[I. L. R., 4 Bom., 638]

14. ——— Certificate of administration of minor's estate.—The Minors' Act, No. XX of 1864.—Default in appearance as indicating consent.—Procedure.—An order for the issue of a certificate of administration to any particular individual under Act XX of 1864 ought not to be made until it is ascertained whether that individual is willing to take it. Where an order for the issue of a certificate of administration was made on default of the mother of the infant to appear and show cause why the certificate should not be issued to her,—*Held* that such default in appearance ought not to be accepted as an assent to the issuing of the certificate to the non-appearing party. If no relative or friend of the minor can be found who is willing to take out a certificate, the District Judge should name some officer of his Court or some respectable nominee of the suing creditor of the infant. **BABAJI v. MARUTI**
[I. L. R., 5 Bom., 310]

2. DUTIES AND POWERS OF GUARDIANS.**15. ——— Filing accounts of estates.**

—*Payment of debts barred by lapse of time.*—Guardians appointed by Civil Courts ought to file the accounts of their estates annually as required by law. A guardian is not necessarily accountable for sums paid by him in discharge of debts barred

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS—continued.****Filing accounts of estates—continued.**

by limitation. **CHOWDREY CHUTTERMAL SINGH v. GOVERNMENT** **3 W. R., 57**

16. — Accounts and inventory.—*Minors' Act (XX of 1864), ss. 6 and 16.*—The person appointed administrator to a minor's estate under section 6 of the Bombay Minors' Act (XX of 1864) is not liable to furnish an inventory and accounts under section 16 of the Act. **VALLABHDAS HIRACHAND v. GOKALDAS TEJIBAM**

[**3 Bom., A. C., 89**

17. — Property of minor in hands of Court.—*Brother's right to receive and apply funds.*—Where the Court has taken the property of a minor into its own hands, the guardian appointed by the Court, and not the brother, is the right party to receive and apply the money granted by the Court to defray the expenses of the kurnobade and marriage of the ward. **MONEMOTHONATH DEY v. AUSHOOTOSH DEY** **1 Ind. Jur., N. S., 24**

18. — Testamentary guardian.—*Regulations previous to Act IX of 1861.—Power of District Court over guardian deriving authority from will.*—A testamentary guardian applied to the District Court for permission to remove his wards for the purpose of having them educated. Held that as the guardian derived his authority from the will of the minor's father, and did not come within the meaning of the Regulations and Acts previous to Act IX of 1861, he could not thus apply to the District Court. **SASHADEY AITYANGAR v. PERIA NATACHAR alias PARWATHA VUTHANI NATACHAR** **3 Mad., 94.**

19. — Arrangements for minor's education.—*Collector as guardian.—Act XL of 1858, s. 12.*—A Collector appointed guardian, under section 12, Act XL of 1858, has power to make arrangements for a minor's education, and is not so far amenable to the jurisdiction of the Civil Courts. **RAMENDRA BHUTTACHARJEE v. COLLECTOR OF RAJSHAYHYE** **14 W. R., 113**

20. — Acts of guardian as representative of minor in suit.—*Admissions in suit by or against minor.*—It is incumbent upon a Court which is called upon to try an issue between a person of mature years and an infant, to take care that facts essential to his adversary's case are not unadvisedly admitted on behalf of the infant. The Court should take nothing as admitted against an infant party to the suit unless it is satisfied that the admission is made by some one competent to bind the infant, and fully informed upon the facts of the matter in litigation. **ABDUL HYE v. BANER PRASHAD** **21 W. R., 228**

21. — Improper conduct of suit brought against minor.—*Fraud.—Suppression of facts in favour of minor.*—B., "for self and as guardian of C., a minor," was defendant in a

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS—continued.****Acts of guardian as representative of minor in suit—continued.**

suit for debt brought by A. In that suit, a part payment of the debt by B. to A. on account of C. was suppressed, a personal decree was given against the minor, and, in execution of that decree, certain property belonging to the minor was sold. Held, in a subsequent suit by the minor, that the latter was entitled to have the decree and the subsequent sale set aside, as against a purchaser with notice, on the ground of fraud. **GRISH CHUNDER MOOKERJEE v. MILLER** **3 C. L. R., 17**

22. — Decree against minor, Sale under.—*Suit to set sale aside on attaining majority, Ground for.—Procedure.*—Where a decree has been made against an infant duly represented by his guardian, and the infant on attaining his majority seeks to set that decree aside by a separate suit, he can succeed only on proof of fraud or collusion on the part of his guardian. If the infant desire to have the decree set aside because any available good ground of defence was not put forward at the hearing by his guardian, he should apply for a review. If the decree were an *ex parte* one, the procedure adopted should be that given in the Civil Procedure Code for setting aside *ex parte* decrees. **RAGHUBAR DYAL SAHU v. BHIKYA LAL MISSEH** **1 I. L. R., 12 Calo., 69**

23. — Sale under decree in suit where minor is not properly represented.—A sale under a decree in a suit in which the minor was not properly represented is not valid. **JUNGEN LALL v. SHAM LALL MISSEH**

[**20 W. R., 120**

24. — Power of lawful guardian to set aside decrees obtained by unauthorised guardian.—Held that a decree obtained against a minor and his property represented by an unauthorised guardian may be set aside by a lawful guardian without imputation of fraud or collusion, and that such decree would have no effect, and will not be binding on the minor or against his property. **KHOUSHALO v. SUBOOKEH** **1 Agra, 175**

25. — Acts of guardian how far binding on minor.—*Payment before certificate granted.*—Held that the act of the guardian was binding on the minor, unless it be proved that it was an unreasonable one, and that the payment by the debtor before any certificate was obtained was not an invalid payment. **MOTEE RAM SAROO v. KHULNELLOLLAH** **2 Agra, 338**

26. — Power of dealing with property of minor.—*Brother managing family.—Power of, to act for minor.*—A brother acting as manager of the family property and for the benefit of the minors, although he has not obtained a certificate of guardianship under Act XL of 1858, may make a temporary alienation of the family property

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS**
—continued.**Power of dealing with property of minor**
—continued.

for necessary purposes and for the benefit of the minors. *LALLA SHETUL PERSHAD v. CHAND KHAN* [2 N. W., 428]

27. ————— *Sale by guardian without certificate.—Invalidity of sale.—Refund of purchase-money.*—A sale made by a guardian without the sanction of the Court, required by Act XL of 1858, section 18, is made without power, and is therefore invalid, even if the purchaser has acted honestly and paid a fair price. In such a case, where possession was ordered to be restored with mesne profits, it was made contingent on repayment to the purchaser of so much of the purchase-money as had been applied to the benefit of the minor's estate. *SUBUT CHUNDER CHATTERJEE v. ASHOO-TOSH CHATTERJEE* **24 W. R., 46**

28. ————— *Sale by guardian.—De facto and de jure guardian.—Transaction beneficial to minor.*—Where a deed of sale was executed by a *de facto* guardian of certain minors, and the consideration-money was duly applied for the benefit of the property, and the transaction was found to be a necessary one and beneficial to the minors, the mere fact that the manager was not *de jure* guardian is not sufficient to invalidate the transaction. *GUNGA PERSHAD v. PHOOL SINGH* [10 B. L. R., 368, note: 10 W. R., 106]

29. ————— *Alienation by de facto guardian without certificate under Act XX of 1864.*—Alienations for family purposes of the ancestral estate by a Hindu widow (the mother of a minor son), though she was not appointed an administratrix under Act XX of 1864, upheld as made by a *de facto* manager. *BAI AMRIT v. BAI MANIK* . 12 Bom., 79

30. ————— *Powers of de facto guardian to grant leases.*—A *de facto* guardian has not in that capacity larger powers than one appointed under Act XL of 1858, and is therefore not competent to grant a lease for ten years without an order of Court previously obtained. *KHETTUE NATH DASS v. RAM JADOO BHUTTACHARJEE* . 24 W. R., 49

31. ————— *Powers of de facto guardian.—Minor.—Act XL of 1858.*—No greater powers can be exercised by a *de facto* guardian who has not legally completed his right to manage a minor's estate, than can be exercised by a guardian duly appointed under Act XL of 1858, with reference to which Act his powers must be determined. *ABHASSI BEGUM v. RAJROOP KOONWAR* [I. L. R., 4 Calc., 33: 2 C. L. R., 249]

32. ————— *Alienation by guardian without certificate.—Return of property to ward.*—An alienation by the natural guardian of a ward's immoveable estate made without having obtained a certificate under the Minors' Act is invalid. The Court, while declaring such an alienation invalid, will, under special circumstances, order the ward to

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS**
—continued.**Power of dealing with property of minor**
—continued.

repay the amount of the purchase-money paid to the guardian, before setting aside the sale and directing the alienated property to be made over to the ward. *BAI KESAB v. BAI GANGA* . 8 Bom., A. C., 31

See MUTHOORA DOSS v. KANOO BEHAREE SINGH [21 W. R., 267]

33. ————— *Compromise by guardian with certificate.—Proof of sanction of Court.*—Before accepting a compromise, affecting rights in immoveable property, tendered in special appeal by a guardian appearing under a certificate on behalf of a minor, the Court requires the certificate-holder to procure the consent of the Court, by which the certificate was granted, to the filing of the compromise. *SHRONUNDUN SINGH v. KANSA KOORE* [6 N. W., 179]

34. ————— *Transaction by guardian without sanction of Court.—Act XL of 1858, s. 18.*—A suit to recover possession of the plaintiff's share of certain ancestral property, which had been pledged by her mother as guardian and other relatives during her minority for a sum of money lent on a bond, on which the obligee afterwards obtained an *ex parte* decree declaring the property mortgaged to be liable in satisfaction thereof, having been dismissed by the first Court, the order of dismissal was upheld by the lower Appellate Court: the plaintiff then preferred a special appeal. *Held* that, although the guardian had not obtained the sanction of the Court under Act XL of 1858, section 18, the irregularity ought not to prevail where the mortgage transaction was a proper one, and there was subsequently a decree in a suit in which the minor was represented under which the property was sold. *ABHUTOONNISSA v. GOLUCK CHUNDER SEN* **22 W. R., 77**

35. ————— *Act XL of 1858, s. 18.—Sale without sanction of Court.—Transaction for benefit of minor's estate.*—In order to save certain property from sale in execution of a decree obtained upon a mortgage executed by the father of three brothers, of whom one was a minor, the other two brothers, one of whom had, under Act XL of 1858, obtained a certificate of guardianship to the minor brother, executed a mortgage of certain other property in order to raise money and pay off the decree-holder. Upon the latter mortgage the mortgagee obtained a decree and sold the properties covered thereby. No sanction had been obtained by the guardian to encumber the minor's estate. *Held*, on the authority of *Abhutoonniassa v. Goluck Chunder Sen*, 22 W. R., 77, that the transaction having been a proper one, the minor was not entitled to have the sale set aside on the ground that sanction had not been obtained under section 18 of Act XL of 1858, to the mortgage. *TIL KOER v. ROY ANUND KISHORE* [10 C. L. R., 547]

36. ————— *Act XL of 1858, s. 18.—Power of guardian of minor to mortgage*

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS**
—continued.**Power of dealing with property of minor**
—continued.

minor's property.—*Rate of interest.*—A guardian to whom a certificate had been granted under Act XL of 1858 having obtained, under section 18, an order of a Court authorising the raising of money by mortgage of the minor's immovables, mortgaged accordingly. In the order so obtained, the rate of interest at which the money was to be raised was not specified. On a question whether, there being no proof of the necessity or expediency of agreeing to pay interest at a rate so high as eighteen per cent., the agreement to pay at this rate was rightly set aside by the High Court, which decreed interest at twelve per cent. *Held* that the proper construction of the order, and the one most favourable to the lender regarding the rate of interest, was, that the guardian was authorised to borrow only at a reasonable rate of interest; and that consequently the decree of the High Court was right. **GANGAPRESHAD SAHU v. MAHARANI BIBI**

[**L. L. R., 11 Calo., 379 : L. R., 12 I. A., 47**

37. ———— *Minor, Interest of, not represented.*—*Partition of joint property in which minor was interested.*—In a suit between co-proprietors, plaintiffs sought to recover exclusive possession of a mouzah which they claimed to have derived in a partition made some years before, and to have enjoyed it under the terms of that partition until they were dispossessed from it by defendant No. 1, one *D. N.*, who, on the other hand, denied that he had more than a 4-anna share, alleging that plaintiffs were not entitled to the whole mouzah, and that the partition had been fraudulent and had been effected while he was a minor. It appeared that no formalities had been observed in coming to the partition, and no record preserved of the proceedings except a list representing the result arrived at; that the division was effected simply on reference to a thakbust map, an average rental per bigah taken as the basis thereof, and a number of bigahs allotted in proportion to each individual's share. None of the ordinary precautions were taken for the protection of the interest of minors. *Held* that the partition was not made in such way, and under such circumstances, as to be in itself obligatory on the minor, who had the option of repudiating it when he came of age or within a reasonable period after that date. *Held*, also, that the minor could only be held to have accepted the partition if he had acted in such a way to the plaintiffs as to lead them naturally to suppose that he had done so. **KALIE SUNKUR SANNYAL v. DENENDRONATH SANNYAL** **23 W. R., 68**

38. ———— *Refusal of Court to sanction compromise on behalf of minor.*—The acts of guardians on behalf of minors must show the strictest good faith, and must be based on considerations of actual necessity and advantage, not on calculations of possible benefit. In this case the Court refused to sanction a compromise effected between the guardian and the widow by which the minor received

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS**
—continued.**Power of dealing with property of minor**
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immediate possession of half the property as consideration for the surrender of the reversion of the other moiety, no interest or advantage to him being shown in the arrangement. **BODH MULL v. GOUREE SUNKUR** **6 W. R., 16**

39. ———— *Power of, to alienate minor's lands in perpetuity.*—A guardian cannot grant his ward's lands in perpetuity except on clear proof of benefit to the minor. **ODDOYTO CHUNDER KOONDOL v. PROSUNNO KOOMAR BHUT-TACHARJEE** **2 W. R., 325**

40. ———— *Power of compromise.*—*Onus of proof.*—Where it is alleged that a deed of compromise was beneficial to a minor in a transaction involving a surrender of the minor's title in a large estate for a very inadequate maintenance, and her waiver of the rights of appeal and cross-appeal, the onus of proving that such a deed was beneficial to the minor is on the party making the allegation. **ROSHAN JAHAN v. ENAFT HOSSEIN. ENAFT HOSSEIN v. ROSHAN JAHAN** **5 W. R., 5**

41. ———— *Effect on minor's estate of bonds for money raised for minor's benefit.*—A minor's estate is not liable under bonds contracted by his guardian otherwise than for the minor's benefit, and without legal necessity. **DROPUTTER KOONWAR v. DHAMOO LALL** **11 W. R., 240**

42. ———— *Power of mother to compromise.*—A mother as guardian has no power to make a compromise on behalf of a minor daughter, unless the compromise is beneficial to the daughter's interests. **ROUSHAN JAHAN v. ENAFT HOSSEIN** [**W. R., 1864, 83**

43. ———— *Test of validity of transaction.*—The test of the validity of a transaction effected by a guardian is whether it was beneficial to the minor. **LALLA BOODMULL v. LALA GOUREE SUNKUR** **4 W. R., 71**

44. ———— *Power of binding minor's estate for debt.*—*Sale in execution of decree.*—A sale in execution of a decree against an adoptive mother is good as against the adopted son, when made, not personally, but as guardian of the adopted son, and not for a personal debt, but for payments made by co-sharers of Government revenue on account of the adopted son to preserve their joint property. The estate of the adopted son is not liable for a debt without proof that the debt is other than personal. **ROOPMONJOOREE CHOWDHREANEE v. RAM-LALL SIRCAR. GIRESH CHUNDER LAHOREE v. RAM-LALL SIRCAR** **1 W. R., 144**

45. ———— *Mother.*—*Power to bind sons.*—A mother can bind her sons acting in good faith as their guardian. **MAKBUL ALI v. MAS-NAD BIBEE**

[**3 B. L. R., A. C., 54 : 11 W. R., 396**

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS—continued.****Power of dealing with property of minor—continued.**

46. ————— *Relinquishment by guardian of portion of property.*—*A. sued B. to recover possession of an hereditary jote, of which he alleged he had been dispossessed by B. during his minority. B. raised the defence of relinquishment by A.'s grandmother and guardian. The Munsif decided against A. on the merits, and his decision was upheld by the Judge. Held on special appeal that to make the relinquishment, if any, valid against A., it ought to have been shown that it was for A.'s benefit. Decision of the lower Court reversed. KEDARNATH MOOKERJEE v. MATHURANATH DUTT*
[1 B. L. R., A. C., 17: 10 W. R., 59]

In the same case on review, LOCH, J., held that the judgment of the High Court on special appeal must be reversed as being *ultra vires*, for that the question of injury to the minor was not urged in the Court below; no issue was raised on that point, and even if the relinquishment of the jote by the guardian did turn out to the disadvantage of the minor, that was not sufficient ground for setting aside the act of the guardian as invalid, provided that, at the time it was done, it appeared to be for the interest of the minor and was done in good faith. GLOVER, J., held that the conclusion of the High Court on special appeal was justified, but he was willing to remand the case to the Judge below to find the fact whether or not the relinquishment by the guardian was made in good faith for the interests of the minor. MATHURANATH DUTT v. KEDARNATH MOOKERJEE

[2 B. L. R., A. C., 128]

47. ————— *Suit on account stated.*—*Limitation Act, 1877, art. 64.*—*Transaction for benefit of minor.*—A suit upon an account stated against a minor cannot succeed unless it be shown that the act of the guardian in the matter of the settlement of the account is beneficial to the interests of the minor. AZUDDIN HOSSAIN v. LLOYD

[13 C. L. R., 112]

48. ————— *Pre-emption.*—*Power to assert right of.*—The guardian of a minor is competent to assert a right of pre-emption and to refuse or accept an offer of a share in pursuance of such a right, and the minor is bound by his guardian's act if done in good faith and in his interest. LAL BAHADUR SINGH v. DURGA SINGH

[I. L. R., 3 All., 437]

49. ————— *Setting aside award made on behalf of minor sons.*—An arbitration award as to division of property left to minor sons alleged to give effect to the wishes of a father regarding a partial division of his property after his death, was set aside, so far as it affected those sons, on proof that the partition was injurious to them. RAMNARAIN PORAMANICK v. SREEMUTTY DOSSEN

[1 W. R., 280]

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS—continued.****Power of dealing with property of minor—continued.**

50. ————— *Acts of guardian as sole proprietor.*—Any act done by the widow, and any decree given against her, as sole proprietor of the lands, and not as guardian, would not, if she were found to have been holding actually as guardian, bind the minors. BAHUR ALI v. SOOKHA BIBEE

[13 W. R., 63]

51. ————— *Sale of expectancy by, on behalf of minor.*—*Quare.*—Whether a mere expectancy can be the subject of a sale, and if so, of a sale by a guardian, acting or purporting to act on behalf of an infant. DOOLI CHAND v. BIRJ BHOOKUN LAL AWASTI

6 C. L. R., 528

52. ————— *Power to bind infant.*—*Division of property.*—*Fraud.*—A division of property took place in 1837 between A., the mother and guardian of the plaintiff, and B., the husband of two childless widows, who became defendants in a suit to recover possession of the property on the ground that the division did not bind the plaintiff. Held that there being no proof of fraud, nor that undue advantage was taken of plaintiff's minority, and in the absence of proof of gross inequality in the distribution of the property, the division was valid and binding upon the plaintiff. NALLAPA REDDI v. BILAMMAL

[2 Mad., 193]

53. ————— *Suit for partition of family property.*—A suit on behalf of a minor for partition will lie, if the interests of the minor are likely to be prejudiced by the property being left in the hands of the coparceners from whom it is sought to recover it. KAMAKSHI AMMAL v. CHIDAMBARA REDDI

3 Mad., 94

CHOKALINGAM PILLAI v. SVAMITYAR PILLAI

[1 Mad., 105]

PARVATHI v. MANJAYA KARANATHA

[5 Mad., 193]

54. ————— *Power to bind infant.*—*Reference of question as to property to panchayat.*—All acts of the guardian of a Hindu infant, which are such as the infant might, if of age, reasonably and prudently do for himself, should be upheld. Such a guardian may bind his ward by referring to a panchayat of their caste a question of customary partition. Where a sudra died leaving two wives, one with an only son and infant, and the other with two sons,—Held that the guardian of the infant might refer the question whether the deceased's estate should be divided according to Patni-bhaga or Putra-bhaga. TENMAKAL v. SUBBAMAL

2 Mad., 47

55. ————— *Sale by guardian.*—*Compromise.*—*Onus probandi.*—A suit by the plaintiff's guardians for the plaintiff's mother's share in certain dower resulted in a decree for Rs62,913 calculated on the allegation in the plaint that such share was a third of the entire amount of dower. That

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GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS—continued.****Power of dealing with property of minor—continued.**

suit having been sold by the plaintiff's guardians for the alleged sum of Rs1,000, the plaintiff brought the present suit to set aside that sale as collusive. *Held* that it was incumbent on the defendants in this suit to prove that they paid the Rs1,000 to the plaintiff when he came of age, or at least that the money reached the plaintiff's hands when he came of age. **ABDOOL ALI v. MOZUFFER ALI CHOWDHRY** [16 W. R., P. C., 22

56. ——— *Suit on bond executed by mother for debts which son, then a minor, might be liable to pay.*—A bond executed by a widow in possession of a zemindari was held binding on the adopted son of the late zemindar, the inference from the evidence being that the bond was given for debts which the defendant (the adopted son), as owner of the zemindari, might be liable to pay, and that by his own acts he had admitted that he actually was liable to the payment. **CHETTY COLUM COOMARA VEN-CATACHILLA RADDYAR v. RUNGASANWEY IYENGAR** [4 W. R., P. C., 71; 8 Moore's I. A., 319

57. ——— *Necessity for borrowing.—Mortgage by de facto guardian or manager without de jure title.*—Under the Hindu law, the right of a *bond fide* incumbrancer who has taken from a *de facto* guardian or manager a charge on lands created honestly for the purpose of saving the estate, or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* manager) affected by the want of union of the *de facto* with the *de jure* title. Under the Hindu law, the power of a manager for an infant heir to charge an ancestral estate is a limited and qualified one, to be exercised in a case of need, or for the benefit of the estate. Where the charge is one that a prudent owner would make in order to benefit the estate, the *bond fide* lender is not affected by the precedent mismanagement of the estate. The lender is bound to enquire into the necessities for the loan, and to satisfy himself that the manager is acting for the benefit of the estate. But if he does so enquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and he is not bound to see to the application of the money. The mere creation of a charge by a manager, securing a proper debt, cannot be viewed as improvident management; and a *bond fide* creditor should not suffer when he has acted honestly and with due caution but is himself deceived. **HUNOOMAN PERSHAD PANDHY v. MUNDRAJ KOONWARRE** [6 Moore's I. A., 393; 18 W. R., 81, note

58. ——— *Alienation made by guardian.—Suit to set aside.*—A suit brought by a Hindu widow as guardian of her minor child, to set aside alienations made by her late husband, the minor's father, is governed by the principle laid down by the Privy Council in the case of *Girdhars Lall v. Kan-*

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS—continued.****Power of dealing with property of minor—continued.**

too Lall, 14 B. L. R., 187; 22 W. R., 56, viz., that the estate is not exempted from liability unless the alienations were illegal or made for an immoral purpose. **SANJOOGHE KOOME v. HUR PERSHAD** [24 W. R., 274

59. ——— *Bond fide purchaser, What constitutes.*—In a sale by a guardian of a minor without necessity, the purchaser cannot be said to have acted *bond fide* unless his belief that the sale was necessary had been arrived at after due care and attention. **SHEO PERSHAD RAM v. THAKOOR PERSHAD. GOUR PERSHAD NARAIN v. SHEO PERSHAD RAM** 5 W. R., 103

60. ——— *Purchaser from guardian.*—Where a purchaser of immovable property deals with a person having a qualified power of dealing with that property, it lies upon the purchaser to give some reason of the need which actually existed, or was alleged to exist, for the sale. **VADALI RAMAKRISHNAMA v. MANDA APPAIYA** [2 Mad., 407

MUTHOORA DOSS v. KANOO BEHAREE SINGH [21 W. R., 287

61. ——— *Suit to set aside sale.—Proof of necessity for sale.*—In a suit to set aside sales made by a minor's guardians, on the ground that the sales were not justified by any recognised legal necessity, the onus is on the defendant to prove the necessity. Nature of proof sufficient to discharge such onus explained. **LOOLOO SINGH v. RAJENDUR LAHA** 8 W. R., 364

62. ——— *Sale by guardians.—Onus of proof.—Purchaser.*—*Held* that the onus of proving that a sale by his guardians of a minor's property was necessary and for his benefit lies upon the purchaser, and that adequacy of price is an important point to be considered in determining this question. **DAGDU BIN DAUD TEJI PARDESHI v. SHEKH SAHEB VALAD BADRUDDIN KAMBLE** [2 Bom., 369; 2nd Ed., 348

63. ——— *Onus of proof.—Purchaser.*—Where the plaintiff was a minor, and his interest could not *prima facie* be alienated,—*Held* that the onus of proving that due enquiries were made as to the necessities for the loan, and that it was incurred by the manager for the benefit of the estate, lay on the alienee. It is not necessary to show that such necessities actually existed, but that reasonable enquiry was made as to the existence of such necessities, and the object for which the loan was intended. **POOLUNDER SINGH v. RAM PERSHAD** [2 Agra, 147

64. ——— *Transaction by guardian.—Responsibility of lender to guardian of a minor.*—A lender to the manager of a minor's estate is bound to satisfy himself that the loan is for

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS**
—continued.**Power of dealing with property of minor**
—continued.

the benefit of the estate. **LALLAH BUNSHEDHUR v. BINDESHKUM DUTT SINGH**

[1 Ind. Jur., N. S., 165]

65. ———— Though the lender of money borrowed by the guardian of a minor for the payment of a family debt is bound to enquire into the necessity for the loan, and to satisfy himself as well as he can that the guardian is acting for the benefit of the estate, yet if he does so enquire and acts honestly, the real existence of an alleged sufficient and reasonably created necessity is not a condition precedent to the validity of his charge, and he is not, under such circumstances, bound to see to the application of his money. **MAHA BEER PRESHAD SINGH v. DUMREERAM OPADHYA**

[W. R., 1864, 168]

RADHA KISHORE MOOKERJEE v. MIRTTOONJOY GOW 7 W. R., 23

66. ———— *Sale by guardian.—Purchaser.—Grounds for reversal of sale.*—Although purchasers are not bound to look to the application of the purchase-money, or to enquire whether there were goods sufficient to redeem the mortgage, and so to obviate the necessity of a sale of a minor's property, yet the purchaser not proving necessity or not satisfying himself of the existence of necessity, and the unwillingness of the minor's mother to dispose of the property in his minority, are sufficient legal grounds for reversal of the sale. **GOMAIN SIRCAR v. PRANATH GOOPTO**

[1 W. R., 14]

67. ———— *Alienation of minor's property by intervention of Court.—Suit to set aside alienation.—Purchaser of minor's property.*—An alienation of property during the owner's minority is open to be questioned when the minor comes of age, even if it was effected partly through the intervention of a Civil Court, *e.g.*, under a decree on foreclosure proceedings. A party justifying a title so obtained against a minor must show not only that he was acting honestly in the transaction, but that facts existed at the time of the mortgage such as would reasonably support the conclusion that there was a necessity for the alienation, and that the mortgagor had authority to give a good title as the minor's agent. **BUZUNG SAHOY SINGH v. MAUTORA CHOWDHRAIN** 22 W. R., 119

68. ———— *Sale of minor's property by guardian.—Proof of legal necessity for sale.*—The mother and guardian of two minors borrowed Rs.1,000 ostensibly for their marriage expenses. The lender of the money obtained an *ex parte* decree against the minors, and in execution attached their estate, when the mother, in order to save it from sale, sold half the estate for Rs.2,500, out of which she satisfied the decree. One of the minors subsequently brought a suit against the pur-

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS**
—continued.**Power of dealing with property of minor**
—continued.

chasers to set aside the sale. *Held* that it was obligatory on the defendants to prove that, in selling the property, the mother acted under an unavoidable necessity in the interests of her minor sons, and that the decree against the minors was such as would bind their interests. **LOOTY HOSSEIN v. DURSUN LALL SAHOO** 23 W. R., 424

69. ———— *Guardian and minor.—Sale of minor's property.—Legal necessity.*—Where a guardian conveyed the property of her minor son by a deed of sale in which she did not in terms describe herself as his guardian,—*Held* that the omission was immaterial, since it clearly appeared from the deed that it was the minor's property which formed the subject of sale. **HANUMAN PERSAUD v. BABOOSE MUNRAJ KOONWEREE**, 6 Moore's I. A., 393; and **JADOONATH CHUCKERBUTTY v. TWESDIE**, 11 W. R., 20, followed. A widow, guardian of her minor son, being left after her husband's death in a state of extreme poverty, sold the entire property of the minor for less than one fourth of its real market value, by a sale-deed reciting that the object of the sale was the minor's maintenance and marriage. It was found that the sale was obtained by the vendee by taking advantage of the guardian's poverty, and that there was nothing to show that, in purchasing the property, he had satisfied himself of the actual existence of the necessities for which the sale purported to be made. *Held* that the recital in the deed of the objects of sale was in itself no evidence of the necessity of the alienation. **RAJLAKHI DEBIA v. GAKUL CHANDRA CHOWDHRY**, 3 B. L. R., P. C., 57, followed. *Held*, also, that the needy circumstances of the minor did not by themselves constitute a sufficient legal necessity for such an alienation. Under the Hindu law, the maintenance or marriage of a minor may be a legitimate cause for the alienation of his property by the guardian, but cannot justify a Court of Equity in upholding a bargain obviously imprudent and reckless. The best test is whether the alienation would have been reasonably and prudently made by the minor himself had he been of full age. *Held*, further, that upon such an alienation being set aside in consequence of a suit brought by the minor, the vendee was entitled to be recouped by the plaintiff to the extent of any portion of the purchase-money which had been appropriated to the latter's benefit. **PARAN CHANDRA PAL v. KARUNAMAYI DAS**, 7 B. L. R., 90; **BAI KESAR v. BAI GANGA**, 8 Bom., A. C., 31; **KWARJI v. MATI HARIDAS**, 1 L. R., 3 Bom., 234; and **GADGEPPA DESAI v. APAJI JIVANRAO**, 1 L. R., 3 Bom., 237, referred to. **MAKUNDI v. SARASUKH** 1 L. R., 6 All., 417

70. ———— *Sale by guardian for minor.—Necessity.—Bona fides.*—When neither want of enquiry nor *mala fides* is shown, the existence of legal necessity must be presumed, and the acts of the guardian considered to be the acts of the minor. *Quere*,—Whether the same rule strictly

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS**
—continued.**Power of dealing with property of minor**
—continued.

applies to the relation of the head of a family and his descendants holding vested rights in his estate, in regard to alienations by the head of the family to which the descendants did not expressly consent. **SEETUL PERSHAD SINGH v. GOUR DYAL SINGH**

[1 W. R., 283]

71. ——— Sale of minor's property for transactions by guardian not for benefit of minor.—Want of necessity.—Ground for setting aside sale.—In 1850 the guardian of a minor (his step-mother) by an ikrarnamah among other things charged the minor's ancestral estate with the payment of Rs27,000 in favour of L., the amount of his alleged claim against the estate, respecting which an appeal was then pending, but to which estate he was himself a debtor, undertaking at the same time to prosecute certain claims against M., L. agreeing to advance money for that purpose and to resist certain claims brought by M. against the minor's estate. In February 1851, M. having obtained judgment against the estate for Rs26,986, and taken out execution thereon, the estate was advertised for sale on the 20th of that month. To prevent the sale L. advanced the amount of the judgment-debt, and on the 19th of that month commenced a suit against the guardian, in which he claimed the Rs26,986, the amount advanced by him, and the Rs27,000 agreed to be paid him by the ikrarnamah, and the further sum of Rs1,354 alleged to have been paid by him for the proceedings against M., making together Rs55,341. On the following day the guardian filed a confession of judgment admitting the debt, hypothecating the minor's estate, and undertaking to pay the same by instalments, with the exception of the Rs27,000, at 6 per cent. interest. The instalments not being paid, L. in 1853 took out execution on the judgment, and under the execution put up the estate for sale, and became the purchaser himself. On the minor attaining his majority he brought a suit to set aside the sale, impeaching the transaction as fraudulent and collusive obtained by L. from his late guardian. The Courts in India set aside the sale on the ground of fraud, and decreed the restitution of the estate, with means profits and damages, subject to the repayment by way of reduction of the Rs26,986 at 5 per cent. Upon appeal such decree affirmed by the Judicial Committee, first on the ground that the transaction was fraudulent and collusive and prejudicial to the estate of the minor, there being no evidence to show the necessity for the guardian obtaining the pecuniary assistance sought, or to justify her submitting to L.'s extraordinary terms contained in the ikrarnamah, by allowing, without consideration, his doubtful claim against the minor's estate, to which he really was a debtor himself; and secondly, that L. who set up the charge, had failed to relieve himself of the burden which the Hindu law cast upon him of showing that he had at least good ground for supposing that the transaction was for the benefit of the minor's estate. In setting aside the ikrarnamah and sale, interest was allowed

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS**
—continued.**Power of dealing with property of minor**
—continued.

to L. on the Rs26,000 advanced by him at the rate of 6 per cent. contracted for in the ikrarnamah in lieu of 5 per cent. awarded by the Sudder Court. Such a modification of the decree of the Court below, held not sufficient to deprive the respondent of his costs of appeal. The case of *Ali Hossein v. Badal Khan, S. D. A., N.-W. P., 1863, 19th May*, where it was held that there is no difference to be made between an innocent purchaser and one tainted with fraud which had brought about an execution sale, observed upon and dissented from. **LALLA BUNSEEDHUR v. BINDERSEEK DUTT SINGH**. 10 Moore's I. A., 454

72. ——— Loan by guardian for marriage expenses of minor.—Legal necessity.—The marriage of a Hindu minor is a legitimate cause of expense in regard to which his guardian can bind him, unless it is shown that the amount of the loan was extravagant for the purpose, considering the social or pecuniary circumstances of the minor, or that it was not duly applied and expended. **JUG-GESSUR SINGH v. NILAMBUR BISWAS**

[3 W. R., 217]

73. ——— Sale by guardian.—Onus of proof of bona fides of purchaser.—Purchasers from a guardian must show that they acted bona fide. **RUNNOO PANDEY v. BAKSH ALI**

[3 N. W., 2]

74. ——— Decree.—Legal necessity.—The existence of a decree, which may at any time be executed against ancestral property, is a clear necessity for contracting a loan, and ample justification to any one coming forward to lend money on the mortgage of the property. **PURBESUR OJHA v. GOOLBEE**

11 W. R., 446

75. ——— Sale by guardian on behalf of minor.—Repayment of purchase-money before minor allowed to recover estate.—The sale by S.'s mother of his share, during his minority, in the estate of his deceased father, was rightly held to be invalid; but his claim to recover possession of the share from the purchasers, who had redeemed a mortgage existing on the estate created by his father, without tendering payment of his share of the mortgage-debt, was properly dismissed. **PANA ALI v. SADIK HOSSEIN**

7 N. W., 201

76. ——— Sale by guardian.—Suit on majority to set aside sale.—Refund of sale-proceeds.—The plaintiff on coming of age sued to set aside a sale of his ancestral property which had been made by his guardian during minority. No legal necessity was proved, but it appeared that he had had the benefit of the sale-proceeds. A decree was passed in his favour, but subject to the condition that he should first refund the proceeds of sale. **PARAN CHANDRA PAL v. KARUNAKAYI DAS**

[7 B. L. R., 90: 15 W. R., 268]

GUARDIAN—continued.**2. DUTIES AND POWERS OF GUARDIANS—continued.****Power of dealing with property of minor—continued.**

AGGOOREN HURRIHUR CHURN v. GUNGA PERSAD OPADHYA . . . W. R., 1864, 208

SIRDAR DYAL SINGH v. RAM BUDDUN SINGH [17 W. R., 454]

MUTHOORA DOSS v. KANOO BEHAREE SINGH [21 W. R., 287]

3. RATIFICATION.

77. ——— Sale by guardian.—Acquiescence, after minor comes of age.—The conveyance of property while the owner is a minor is not necessarily inoperative; if the sale is effected by the guardian, and acquiesced in by the minor when he comes of age, it may be valid notwithstanding. KUMUBODDIN v. BHADHOO . . . 11 W. R., 184

78. ——— Delay of minor on coming of age in repudiating act of guardian.—Mere delay on the part of a ward, after attainment of majority, in repudiating an alienation made by his guardian, cannot be treated as a ratification of the guardian's act, but only as evidence of ratification. RAJ NARAIN DEB CHOWDHRY v. KASSER CHUNDER CHOWDHRY [10 B. L. R., 324: 18 W. R., 404]

79. ——— Contract by guardian.—Delay of minor on coming of age in repudiating contract.—Long delay in repudiating a contract by a minor on his attaining majority, when such delay is wholly unaccounted for, is sufficient ground for inferring a ratification of the contract. BOIDONATH DRY v. RAMKISHORE DRY [10 B. L. R., 326, note: 18 W. R., 166]

DOORSAACHURN SHAHA v. RAMNARAIN DOSS [10 B. L. R., 327 note: 18 W. R., 172]

80. ——— Act of guardian after majority of minor.—Person remaining minor as far as public are concerned.—Acquiescence.—Evidence of necessity for loan.—Where a party after attaining full age allowed his mother to give him out to the world as a minor, and as his guardian to mortgage his ancestral property, and permitted the mortgagee to retain possession for five years,—Held that he could not afterwards turn round and repudiate arrangements which were made for his benefit, and for which an innocent party had given valuable consideration. PURMESHUR OJHA v. GOOLBEE [11 W. R., 446]

81. ——— Mode of ratification.—Suit to set aside sale made by mother as guardian.—Minor acting for mother in former suit.—In a suit to set aside a sale effected by plaintiff's mother during his minority, it appearing that plaintiff, eleven months after attaining his majority, signed for his mother a written statement in another suit, to the effect that the property had been sold by her to the defendant,

GUARDIAN—continued.**3. RATIFICATION—continued.****Mode of ratification—continued.**

and that he in that suit conducted his mother's defence, which was that the purchaser from her was entitled to what he claimed, it was held that he must be considered to have acquiesced in and ratified the sale. KEBULKRISTO DASS v. RAMCOOMAR SHAH [9 W. R., 571]

82. ——— Transaction prejudicial to estate.—Formal ratification, Necessity of.—The guardian of a minor as manager of the minor's estate is bound in duty to abstain from entering into any arrangement beneficial to himself and detrimental to the estate; and if any such arrangement has been entered into, it is incumbent on him immediately after the minor comes of age to obtain from him not an accidental but a distinct formal ratification. PROSUNNO COOMAR GHUTTUCK v. WOOMA CHURN MOOKERJEE . 20 W. R., 274

83. ——— Duty of minor.—Compromise, Suit to set aside.—Proof of fraud.—It is not incumbent upon a guardian to contest every claim made against the infant's estate. The Judicial Committee, reversing the finding of the Courts below, refused to set aside a compromise (confirmed by a decree of Court) by the former guardian of the plaintiff of a claim against his estate for debt after sixteen years, the plaintiff having failed to prove that the suit was fictitious, and the compromise fraudulent and collusive. LEKRAJ ROY v. MAHTABCHUND [10 B. L. R., 35]

14 Moore's I. A., 393: 17 W. R., 117

84. ——— Receipt of rent under lease.—Acquiescence in lease by guardian.—Where minors, after coming of age, receive rents under a lease which was granted by their guardians during their minority, they thereby ratify the lease and cannot afterwards repudiate it. RAM CHUNDER SIRCAR v. PRAN GOBIND BOISHNUR . . . 25 W. R., 71

85. ——— Apparent acquiescence.—Compromise by mother for minor sons.—The transactions into which guardians enter on behalf of their wards must secure to the latter some demonstrable advantage, or avert some obvious mischief, in order to obtain recognition in the Courts. Where a compromise was alleged to have been entered into by a mother on behalf of her two minor sons on the one hand, and an adult member of the family on the other, agreeing to give the latter more than had been awarded by a judicial decision, it was held that the compromise was not binding on the minors. Apparent acquiescence in such a compromise by one of the minors after arriving at majority, though evidence against him, is not evidence of a conclusive character when not continued for any considerable time. DHARMAJI VAMAN v. GURRAY SHELINIVAS [10 Bom., 311]

4. DISQUALIFIED PROPRIETORS.

86. ——— Suits by, and against, disqualified proprietors.—Act XIX of 1873 (N. W. P. Land Revenue Act), s. 205.—Act VIII of

GUARDIAN—continued.**4. DISQUALIFIED PROPRIETORS—continued.**

Suits by, and against disqualified proprietors—continued.

1879, s. 23.—Under section 205 of Act XIX of 1873, as amended by section 28 of Act VIII of 1879, a disqualified proprietor whose property is in charge of the Court of Wards must sue and be sued in the Civil Courts by and in the name of his guardian, where a guardian has been appointed, or by and in the name of the Collector of the district in which the suit is brought, where a guardian has not been appointed, whether or not the suit has for its object to set aside an act done by the ward before the date when his property came under the charge of the Court of Wards. **SHEO DIAL CHAUBEY v. COLLECTOR OF GORAKHPUR** [I. L. R., 5 All., 264]

87. ——— **Power to enter into contracts.**—Act VIII of 1879, ss. 23, 24.—Act XIX of 1873 (*N. W. P. Land Revenue Act*), s. 205.—A suit was brought against a disqualified proprietor for money due on a bond, given while her property was under the superintendence of the Court of Wards. The Collector was made a defendant to this suit "because the property of the defendant obligor had come under the superintendence of the Court of Wards before the execution of the bond." *Held* that the Collector's status in the suit—namely, as representative *ad litem* of the defendant—was sufficiently described to entitle him to raise the question of the legal capacity of the defendant to enter into the bond. The mere disqualification of a proprietor to manage his estate does not carry with it a general and absolute disqualification to enter into any contracts at all. *Held*, therefore, where a person whose property was under the superintendence of the Court of Wards borrowed money and gave a bond for the payment of the same, and was sued on the bond in the name of the Collector, that the Court was competent to make a decree against such disqualified proprietor. **COLLECTOR OF BENARES v. SHEO PRASAD** . I. L. R., 5 All., 487

5. LIABILITY OF GUARDIANS.

88. ——— **Act of guardian in proper management of minor's estate.**—Where an act done by a guardian is one arising naturally out of the management of the minor's estate, and especially where it is concurred in by other co-sharers of the same property, the liability for such act attaches not to the guardian but to the estate. **GIRREWAB SINGH v. MUDDUN LALL DASS** . 16 W. R., 252

89. ——— **Guardian ad litem.—Costs, Liability for.**—Where a guardian *ad litem* of an infant had been guilty of gross misconduct in putting executors to proof of a will which he wished to upset for his own private purposes, and which, the evidence shows, was to his knowledge duly executed by the testatrix in a sound state of mind,—*Held* that he was liable for the costs of the suit. **GOOLAM HOOSHY NOOR MAHOMED v. FATMABAI**

[I. L. R., 8 Bom., 391]

GUARDIAN—continued.**5. LIABILITY OF GUARDIANS—continued.**

90. ——— **Liability of widow as guardian.—Personal liability and as representing heirs of husband.**—A widow defending a suit as guardian of her minor son cannot be made liable in her own person as well as representing the heirs of her husband. **BROJO MOHUN MOJUMDAR v. ROODRO NATH SURMAH MOJUMDAR** . 15 W. R., 192

91. ——— **Retaining attorney for minor.—Liability of minor for costs.—Privilege of contract.**—If a guardian or next friend of an infant retain an attorney to act for the infant, no contract is created between the attorney and the infant upon which the attorney can sue the infant for costs. **RADHA NATH BOSE v. SUTTOPOBONO GHOSH** [2 Ind. Jur., N. S., 269]

92. ——— **Liability of guardian for torts.—Torts committed by minor.**—Guardians of a minor cannot be held personally liable for torts committed by such minor. **LUCHMAN DASS v. NARAYAN** . 3 N. W., 191

93. ——— **Right to suit for torts to minor.—Suit by father for personal injury to son.**—A father, as guardian of his minor son, can sue to recover damages for personal injuries received by the son. **MODHOO SOODUN v. KARMOOLAH BISWAS** [9 W. R., 327]

94. ——— **Liability of guardian on security-bond.—Act XL of 1858.—Suit on minor's behalf against guardian's sureties.—Assignment of security-bond.—Act IX of 1861.—Succession Act (X of 1865), s. 257.**—B. having been granted by a District Court a certificate under Act XL of 1858 in respect of the estate of a minor, the Judge of such Court called on her to furnish security, and certain persons accordingly gave security-bonds to the Judge on her behalf. Subsequently B.'s certificate was taken from her, and was granted to A., who brought a suit on the minor's behalf against B.'s sureties for the value of the property intrusted to B. The security-bonds in question were not assigned by the Judge to A. *Held* that, inasmuch as the plaintiff was seeking to enforce contracts which were never made with him or any other person in the character of legal representative of the minor, he had no legal status to maintain the suit. Also that no equitable rights were created in the minor by the bonds, which would render the suit maintainable. *Quare*,—Whether the Judge of a District Court is competent to call upon a person to whom he grants a certificate under Act XL of 1858 to furnish security; and whether, where he has done so, and security-bonds have been given to him, he can assign them in the manner provided in section 257 of the Succession Act, 1865. **AMAR NATH v. THAKUR DAS**

[I. L. R., 5 All., 248]

95. ——— **Liability of guardian for malversation.—Suit on behalf of son to get rid of guardian.**—A mother brought a suit on behalf of her minor son to recover from her step-son, the managing member of the family, the minor's share in the

GUARDIAN—continued.**5. LIABILITY OF GUARDIANS—continued.****Liability of guardian for malversation—continued.**

family property. *Held* that the only ground upon which such a suit could be maintained was that of malversation. The Court might relieve the minor from his brother's authority and appoint another guardian, but a case requiring relief must be made out. *ALIMENAMMAL v. ARUNACHELLAM PILLAI*

[3 Mad., 69]

H**HABEAS CORPUS, WRIT OF—**

1. ——— Power of High Court to issue writ into the mofussil.—*Habeas Corpus Act, 31 Car. II., c. 4.—Reg. III of 1818.—Warrant of arrest of Governor General in Council.*—On an application to the High Court to issue a writ of *habeas corpus* to the Superintendent (a European British subject) of the Alipore Jail,—*Held* that the Supreme Court had power to issue writs of *habeas corpus* to persons in the mofussil, and that the same power is continued to the High Court. As the person against whom the writ was applied for had acted under the written order of the Governor General in Council, the Court would not direct the writ to issue. *IN RE AMER KHAN* **6 B. L. R., 392**

On appeal in the same case, it was held that, assuming the power of a Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ, it appearing that the prisoner was in custody under a warrant in the form prescribed by Regulation III of 1818, the detention was legal. The detention to be legal need only be covered by an actually existing warrant of the Governor General in Council in the form prescribed, without regard to the lawfulness of the arrest. *IN RE AMER KHAN* . **6 B. L. R., 459**

2. ——— Accused becoming insane during criminal trial.—*Detention in lunatic asylum after regaining sanity.*—An accused person having become insane during his trial was placed in a lunatic asylum and was detained there after becoming sane. *Held* that such detention was not illegal, and he was not entitled to his discharge, but should be made over to the authorities for continuation of his trial. *IN THE MATTER OF ELDRED*

[1 Hyde, 173]

3. ——— Return to writ.—*Custody of prisoner in jail.—Return by Sheriff.*—The Sheriff need not specify in his return on a *habeas corpus* that the prisoner has been continuously in his custody, and a prisoner who has not been transferred by the Sheriff to the custody of the jailor by a separate warrant, and is brought up on the writs by the Sheriff, is to be considered as in the custody of the Sheriff. *SPYER v. TANSSEN* **Bourke, O. C., 28**

4. ——— Affidavit to controvert return.—*Amenment of return.—Custody of minor.*—56 Geo. III., c. 100.—The return to the

HABEAS CORPUS, WRIT OF.—Return to writ—continued.

writ of *habeas corpus* must be taken to be true, and cannot be controverted by affidavit. In England, 56 George III., chapter 100, section 4, allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country. The return to a writ of *habeas corpus* can, however, be amended. A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to a writ of *habeas corpus* stated that the girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years and nine months), the Court held that she was of years of discretion to choose for herself under whose protection she would remain. *QUEEN v. VAUGHAN. IN THE MATTER OF GANESH SUNDARI DEBI* **5 B. L. R., 418**

But see *IN THE MATTER OF KHATIJIA BIBI*

[5 B. L. R., 557]

where it was held that the return to a writ of *habeas corpus* is not necessarily conclusive, and does not preclude enquiry into the truth of the matters alleged therein, although 56 George III., clause 100, does not apply to this country.

5. ——— Mahomedan law.—*Husband and wife.—Custody of wife.*—On an application for a writ of *habeas corpus* to bring before the Court *M.*, a female infant, who was alleged to be in the unlawful custody of *S.*, a Mahomedan, it was stated that *M.*'s father was a Jew by birth who had embraced the Mahomedan faith many years ago, but had since returned to the Jewish persuasion; that her mother was a Mahomedan woman; that she was detained by *S.* on the allegation that she was married to him, but that the alleged marriage was invalid by reason of the want of consent of her father; and that she was of the age of about nine years, and had not attained puberty; and a writ was thereupon granted. The return stated that *M.* being then about ten years of age, was married with the consent of her mother to *S.*; that after the marriage *M.* and her mother had lived with *S.* until her mother, at the instigation of the father, had left the house of *S.*, taking *M.* with her; that *S.* had thereupon instituted a charge against the father and mother for enticing away and detaining *M.*, on which the Police Magistrate considered the marriage proved, and ordered her to be delivered into the custody of *S.* The High Court refused to consider the custody illegal, and ordered the writ to be quashed. *In re Khatija Bibi*, **5 B. L. R., 557**, distinguished. *IN THE MATTER OF MAHIM BIBI* **13 B. L. R., 160**

6. ——— Constitution of Small Cause Courts.—*Privilege from arrest.*—The Small Cause Court in the Presidency town is not a Court of co-ordinate jurisdiction with the High Court, but a Court of inferior jurisdiction and subject to the order and control of the High Court. Therefore, where, on a prisoner being brought up to the High Court on a writ of *habeas corpus ad subjiciendum*, the return of the jailor stated that the prisoner was

HABEAS CORPUS, WRIT OF.—Return to writ—continued.

detained under a warrant of arrest issued in execution of a decree of the Small Cause Court. *Held* that the return was not conclusive, but the prisoner was entitled to show by affidavit that he was privileged from arrest at the time he was taken into custody. *IN THE MATTER OF OMBITOLALL DEY*

[I. L. R., 1 Calc., 78]

HANDWRITING.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—HANDWRITING.

[8 B. L. R., 490]

See EVIDENCE—CRIMINAL CASES—HANDWRITING

[1 B. L. R., A. Cr., 13
[I. L. R., 10 Calc., 1047]

HAQ.

See DUTIES

2 Bom., 2nd Ed., 75

[2 Bom., 253: 2nd Ed., 239]

7 Bom., A. C., 50

See LIMITATION ACT, 1877, ART. 144 (1859, s. 1, CL. 12)—INTEREST IN IMMOVABLE PROPERTY

13 B. L. R., 254

See PENSIONS ACT, 1871, ss. 3 & 4.

[I. L. R., 5 Bom., 408]

I. L. R., 1 Bom., 203

I. L. R., 4 Bom., 437, 443

See ZEMINDAR, RIGHTS OF—

[Aggra, F. R., 63: Ed. 1874, 48]

HATH-CHITTA, ENTRY IN—

See STAMP ACT, 1869, SCH. II, ART. 5.

[I. L. R., 4 Calc., 885]

25 W. R., 361

HATH-CHITTA BOOK.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.

[1 Ind. Jur., N. S., 358]

HATS.

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURT.

[I. L. R., 5 Calc., 7]

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES.

[5 B. L. R., Ap., 82, note]

6 B. L. R., 74

18 W. R., Cr., 22, 37

6 N. W., 16

20 W. R., Cr., 53

21 W. R., Cr., 26

22 W. R., Cr., 24

4 C. L. R., 410

10 B. L. R., 434

I. L. R., 5 Calc., 7

HEIR, APPLICATION BY, FOR EXECUTION.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R., 1 All., 686]

HEIR, DEVISE TO—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—GENERAL RULES.

[I. L. R., 1 Mad., 252]

HEIR OF DECEASED DEBTOR.

See CASES UNDER MAHOMEDAN LAW—DEBTS.

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

HEIR, RIGHT OF, EXPECTANT ON DEATH OF WIDOW.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—JOINT FAMILY AND REVERSIONARY INTERESTS.

[7 B. L. R., 341, 343, note]

6 W. R., 34

HEREDITARY OFFICE.

See MAHOMEDAN LAW—CUSTOM.

[I. L. R., 1 Bom., 633]

See MAHOMEDAN LAW—KAZI.

[I. L. R., 1 Bom., 633]

I. L. R., 3 Bom., 72

HEREDITARY OFFICE, SUIT FOR—

See ACCOUNT, SUIT FOR—

[I. L. R., 1 Mad., 343]

See LIMITATION ACT, 1877, s. 28 (1871, s. 29)

I. L. R., 1 Mad., 343

See LIMITATION ACT, 1877, ART. 124 (1871, ART. 123)

I. L. R., 1 Mad., 343

[6 Bom., 137]

9 Bom., 99

6 Mad., 301

I. L. R., 5 Bom., 437

HEREDITARY OFFICES.

*Bom. Reg. V of 1827, s. 4.—Limitation.—Grant by Government in inam.—The grant of a village in inam by the Government cannot deprive the meymoodars of their hereditary rights. To entitle the person in possession to the enjoyment of the office and receipt of the dues from the village, it is not essential that the duties of the office should have been actually performed, if the party was prepared to discharge them when required. Claims to recover arrears of such dues are limited by section 4, Regulation V of 1827, of the Bombay Code, to 12 years. *BERMA SHUNKUR v. JAMASJEE SHAPORJEE* [5 W. R., F. C., 121: 2 Moore's I. A., 23]*

HEREDITARY OFFICES ACT (BOMBAY).

See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO—

See LIMITATION ACT, 1877, ART. 62.

[I. L. R., 10 Bom., 665]

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE

I. L. R., 9 Bom., 326

HEREDITARY OFFICES ACT (BOMBAY)—continued.

See SUPREMACY OF HIGH COURT
—CIVIL PROCEDURE CODE, 1882, s. 622.
[I. L. R., 8 Bom., 264]

1. — Alienation of vatan.—Bom. Reg. XVI of 1827, s. 20.—A mortgage by a vatandar of vatan property, executed at a time when Regulation XVI of 1827 was still in force, was, in its inception, void against the heir of the said vatandar; nor did it become in any way validated against the heir by reason of the repeal of that Regulation by Act III (Bombay) of 1874. *KALU NARAYAN KULKARNI v. HANMAPA*

[I. L. R., 5 Bom., 435]

2. — Bom. Reg. XVI of 1827, s. 20.—Adverse possession.—A sale by a vatandar of vatan property, executed at a time when Regulation XVI of 1827 was still in force, was, in its inception, void against the heir of the vatandar; nor did it become in any way the more valid against such heir by reason of the repeal of that Regulation by Act III (Bombay) of 1874. Adverse possession only begins to run against the heir from the time when he is entitled to succeed to the possession of the vatan property,—i.e., from the date of the death of the vatandar. *RAVJOYTRAY v. BALVANTRAY VENKATESH*

[I. L. R., 5 Bom., 437]

3. — Bom. Reg. XVI of 1827.—Mortgage of vatan property.—Mortgagor's life-interest.—On 3rd December 1866, certain vatan property was mortgaged by the deceased defendant to the plaintiff, who obtained a decree on the mortgage in 1861, and attached the rents and profits of the vatan on the 6th October of the same year. On his (defendant's) death in 1869 his son succeeded to the estate, and obtained a removal of the attachment before 1874. The plaintiff thereon applied for a fresh attachment of the property. *Held* that the mortgagor, having only a life-interest, the vatan came into the hands of his son free of the mortgage. *JAGJIVANDAS JAYERDAS v. IMDAD ALI*

[I. L. R., 6 Bom., 211]

ss. 5, 7, 10, 13.—Officiator's remuneration.—Civil process.—Power of Collector.—The power of the Collector to procure the removal of the process of the Civil Court, or to get the Court to set aside a sale under section 13 of the Bombay Hereditary Offices Act, No. III of 1874, extends to any vatan, or any part thereof, or any of the profits thereof, assigned or not assigned as remuneration of an officiator; but the exemption from liability to the process of the Civil Court extends only to such vatan property or profits thereof, as have been assigned as remuneration of an officiator. *NILKANTH ANAJI KARGUPI v. BASLINGA*

[I. L. R., 9 Bom., 104]

ss. 9, 23, and 64.—Talvar.—Sheteanadi.—Lease—Alienation of talvar lands.—Bom. Reg. XVI of 1827, ss. 19 and 20.—Act XI of 1843, s. 15.—In 1866 the defendant took a lease of lands pertaining to a talvar or sheteanadi vatan (the holders of which, under Regulation XVI of 1827, sections 19 and 20, and Act XI of 1843, section 15, are heredi-

HEREDITARY OFFICES ACT (BOMBAY), ss. 9, 23, and 64—continued.

tary district or village officers) from the last owner, who, as sole occupant of the talvar office, was entitled exclusively to the emoluments attached to it. When the Vatan Act (Bombay Act III of 1874) came into operation, no order as regards remuneration was made, but the plaintiff, subject to objection, was appointed to officiate. The plaintiff thereupon sued to eject the defendant. *Held* that the lease to the defendant as a partial alienation was invalid under Regulation XVI of 1827, section 20; that the invalidity thereof was not removed by the Collector not being called upon to declare it to be null and void under section 9, clause 1, of Bombay Act III of 1874; and that the plaintiff, as life-owner, was entitled to possession. *PURSHOTTAM TALVAR v. MUDKANGA-GAVDA SHIDANYAYDA*

[I. L. R., 7 Bom., 420]

1. — s. 10.—Certificate of Collector.—Jurisdiction of Civil Court.—A certificate under section 10 of Bombay Act III of 1874, stating that a vatan has been assigned to an officiator as his remuneration, and granted by the Collector to save a vatan from attachment before judgment, does not exclude the jurisdiction of the Civil Court to make a decree notwithstanding that the decree may be rendered inoperative by the Collector issuing a fresh certificate. *SHIDDESHVAR v. RAMCHANDRA RAO*

[I. L. R., 6 Bom., 463]

2. — Certificate of Collector.—Removal of attachment made by Civil Court.—The applicant held a decree, dated the 28th June 1861, against Ismail Ali Khan and another for Rs. 956-13-7, of which he had already recovered Rs. 742-4-5. On the 24th December 1866 he applied to the Court of the Subordinate Judge at Pen for the attachment of the proceeds of a certain vatan, belonging to the judgment-debtors, in satisfaction of the balance Rs. 214-9-2 due to him, and under his decree, on the 7th February 1868, the Court attached the proceeds by a prohibitory order to the Mamlatdar of Pen. While this attachment was pending, the Collector, on the 13th December 1878, sent a certificate to the Court, and informed it that the proceeds of the vatan were not liable to attachment under sections 10 and 13 of Bombay Act III of 1874. The certificate referred to the profits of the vatan which had accrued due before the passing of the Act, and also to those which had been subsequently assigned by the Collector as remuneration of the officiator. The Court on receiving it removed the attachment, and dismissed the application on the 11th January 1879. The order was affirmed in appeal. On an application to the High Court under its extraordinary jurisdiction,—*Held* that the Collector was authorised, by the first part of section 10 of the Vatan Act, to inform the Court by his certificate that a portion of the profits attached had been assigned by him as remuneration to the officiator, and that the Court was bound, on receiving it, to remove the pending attachment. *Held*, also, that the arrears due at the date of the Act, and which had not been assigned, fell within the latter part of the section. The High Court accordingly dismissed the application with costs. *JAGJIVAN v. ISMAIL ALI KHAN*

[I. L. R., 4 Bom., 426]

HEREDITARY OFFICES ACT (BOMBAY), s. 10—continued.

3. ——— *Vatan, Alienation of.—Certificate of Collector.—Bom. Reg. XVI of 1827, s. 20.*—Previously to the year A.D. 1818, E., the great-grandfather of the plaintiff, settled accounts with Rudrapa, the father of the defendant, in respect of debts due by himself (E.) and his ancestors. The amount found due to Rudrapa was Rs. 20,000, and, as security for this sum, E., by deed dated A.D. 1818, mortgaged to Rudrapa certain vatani lands, and also an annual allowance of Rs. 200 received by him (E.) on account of a *rusum*. Under this deed these properties were to be held by Rudrapa in lieu of interest until repayment of the principal of Rs. 20,000. A dispute subsequently arose as to the amount of the *rusum*, and A., the son and successor of E., the mortgagor, having by attachment interrupted Rudrapa's possession (as mortgagee) of the vatani lands, he (Rudrapa) presented a petition of complaint to the Sub-Collector of B., who issued an order, on the 10th November 1830, to the Mamlatdar, directing him to require the parties to refer their disputes to arbitration. The arbitration took place, and on the 20th August 1831 both parties executed a *rajinama* (exhibit No. 20), which set forth the terms of settlement agreed upon. Rudrapa was to hold the mortgaged lands and *rusum* (annual allowance) for fifty years. At the end of that period the principal debt and all interest thereon was to be deemed to have been paid off, and the lands and *rusum* were to be surrendered to the mortgagor or his heir. Under this *rajinama* the mortgagee held uninterrupted possession of the mortgaged property until A.D. 1872. A., one of the signatories of the *rajinama*, died in 1843, and was succeeded as *vatandar* by E., and E. again was succeeded by the present plaintiff, who in 1872 brought this suit against the defendant (Rudrapa's son) to recover possession of the mortgaged property. The Subordinate Judge held that the mortgage of A.D. 1818 was not genuine, and that the *rajinama* of A.D. 1831, being an alienation of vatani property after the passing of Regulation XVI of 1827, section 20, was invalid as against *vatandars* subsequent to the grantor. He therefore made a decree for the plaintiff. On appeal the Assistant Judge held that the mortgage of A.D. 1818 was genuine, but he agreed with the Subordinate Judge in regarding the *rajinama* as a fresh alienation of vatani property, and, therefore, invalid as against the plaintiff, having been executed since the passing of Regulation XVI of 1827, section 20. He therefore affirmed the decree of the Subordinate Judge. The defendant thereupon filed a special appeal in the High Court, which on the 29th September 1875, reversed the decrees of the Courts below, holding that the *rajinama* was not a fresh alienation of vatani lands, but a compromise of a dispute in regard to an alienation by way of mortgage in A.D. 1818 of vatan lands, and that the *rajinama* was therefore valid, and ought to be enforced, and was not affected by Regulation XVI of 1827, section 20. Previously to this decree of the High Court the plaintiff had applied for execution of the Subordinate Judge's decree, and had been put into possession of the mortgaged property on the

HEREDITARY OFFICES ACT (BOMBAY), s. 10—continued.

9th June 1873. The decrees of the lower Courts being thus reversed by the High Court, the defendant in 1876 presented a petition to the Subordinate Judge, praying a restoration of the mortgaged property to his possession. The plaintiff did not oppose his application, but the Subordinate Judge refused it, on the ground that he had received a certificate from the Collector, issued under section 10 of Bombay Act III of 1874, stating that the property, the subject of the application, formed part of a *vatan*. On appeal, the Assistant Judge affirmed the order of the Subordinate Judge, being of opinion that the receipt of the certificate by the Subordinate Judge compelled him to refrain from giving effect to the decree of the High Court. Thereupon the defendant filed a special appeal in the High Court. *Held* that the certificate of the Collector was unlawfully issued, and that the Subordinate Judge should proceed to give effect to the decree of the High Court of the 29th September 1875 by reinstating the defendant in possession of the premises mentioned in the *rajinama*. The certificate which the Collector is authorised to issue under section 10 of Bombay Act III of 1874 should be sent to the Court by whose decree or order the *vatan* is affected, in the manner mentioned in the section. The Collector's certificate in this case, therefore, had not been issued to the proper Court. The restitution of the mortgaged property to the defendant in whose possession it was at the commencement of this suit in 1872, and until the execution of the erroneous decree of the Court of first instance in 1873, was not such a passing into the ownership or beneficial possession of any person not a *vatandar* of the same *vatan* as is meant by section 10 of Bombay Act III of 1874. The alienation of the vatani property to Rudrapa having, in 1831, received the sanction of the authorised officer of Government, section 10 of Bombay Act III of 1874 did not apply,—the intention of the Act being that whenever the alienation of an hereditary officer's *vatan* has received the sanction of Government, the Collector should not issue his certificate. The words "without the sanction of Government" in section 10 of the Act qualify the whole section. Bombay Act III of 1874 does not authorise the Collector to issue his certificate for the purpose of preventing the rectification of a Subordinate Court's decree by the High Court, or the reinstatement of a person in possession of which he has been deprived by the execution of the erroneous decree of a Subordinate Court. *RACHAPA v. AMINGOVDA*

[I. L. R., 5 Bom., 283]

and ss. 25 and 56.—*Representative vatandar.—Attachment.—Jurisdiction of Revenue and Civil Courts.—Res judicata.*—A decree of the District Court at Sholapur, made in 1863, declared the plaintiff to be an hereditary deputy *vatandar* of a certain *deshpande vatan* vested in the defendants as hereditary *vatandars*, and, as such deputy, entitled to receive a certain sum annually out of the income of the *vatan*. The plaintiff received moneys from time to time under his decree. He was not, however, subsequently to the decree, registered and

HEREDITARY OFFICES ACT (BOMBAY), s. 10, and ss. 25 and 26—continued.

treated as "a representative vatandar" under Bombay Act III of 1874, section 56. In 1875 plaintiff made a darkhast for the attachment of a certain amount belonging to the vatan for arrears due to him under his decree. The money was accordingly attached. Subsequently the Collector issued a certificate to the Subordinate Judge, who had attached it, for the removal of the attachment under Bombay Act III of 1874, section 10. The Subordinate Judge accordingly ordered it to be removed, and his order was affirmed by the Assistant Judge on appeal. The plaintiff thereupon preferred a special appeal to the High Court. *Held* that the lower Courts had no option but to raise the attachment on receiving the Collector's certificate. *Held*, also, that as the plaintiff having, according to law as it stood in 1863, succeeded in then establishing his right to be an hereditary deputy deshbande, he was entitled to the benefit of section 56 of Bombay Act III of 1874. His status as hereditary deputy vatandar was a fact which neither a Revenue nor a Civil Court could properly ignore or reopen. It was *res judicata*. **GOPAL HANMANT GUMASTE v. SAKHARAM GOVIND**
[I. L. R., 4 Bom., 254]

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See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—SANCTION.
[I. L. R., 1 Bom., 607]

HEREDITARY OFFICES REGULATION (Mad. Reg. VI of 1831), s. 3.

Suit for emoluments attached to office of karnam in unsettled districts.—A suit for the emoluments attached to the office of karnam in an unsettled district is barred by the operation of section 3, Regulation VI of 1831. **COLLECTOR OF KISTNA v. KALAYAGUNTA CHINNAMBAGU**
[5 Mad., 360]

HEREDITARY TENURE.

See CASES UNDER GHATWALI TENURE.

See CASES UNDER GRANT.

See CASES UNDER LEASE—CONSTRUCTION.

See UNSETTLED POLLIAM.

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HIGH AND LOW WATER MARK, TITLE TO LANDS BETWEEN—

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[9 B. L. R., 128]

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See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

1. HIGH COURT, CALCUTTA.**(a) CIVIL.**

1. ——— Issue of writ of *fleri facias*.—*Suit begun in Supreme Court.*—24 & 25 Vic., c. 104, s. 12.—In an ordinary suit commenced in the High Court, a writ of *fleri facias* could not issue except within the limits of the Court's original jurisdiction; but in a suit originally commenced in the Supreme Court, the High Court had power, under 24 and 25 Victoria, chapter 104, section 12, to issue a *fleri facias* beyond the limits of its original jurisdiction, and to sell under it property situated there. **MONOMOTHO NATH DAY v. GREENDER CHUNDER GHOSH**
[24 W. R., 366]

GRISH CHUNDER DOSS v. BROJO JIBUN BOSE
[8 C. L. R., 4]

2. ——— Cause of action arising in district in which British subjects were subject to Supreme Court.—The High Court, previously to the issue of the order in Council, No. 4366, dated 22nd November 1865, had jurisdiction in cases in which the cause of action arose in a district in which British subjects were formerly subject to the jurisdiction of the Supreme Court. **INDIAN CARRYING Co. v. MCCARTHEY** Cor., 116

3. ——— Irregularity in title of suit.—*Immaterial mistake.*—Where a suit, cognisable by the High Court by reason of the testamentary and intestate jurisdiction of the Court, was wrongly entitled as being brought in the ordinary original civil jurisdiction,—*Held* that the Court had jurisdiction to entertain the suit. 'It was a mere blunder which the Court could correct. **TOYLUCK NAUTH DASS v. MEGNAUTH DASS** 2 Ind., Jur., N. S., 245

4. ——— Power of execution of decree.—*Execution out of jurisdiction.*—The High Court, in the exercise of its civil jurisdiction, had not the

HIGH COURT, JURISDICTION OF—
*continued.***1. HIGH COURT, CALCUTTA—continued.****(a) CIVIL—continued.****Power of execution of decree—continued.**

power to execute its own decree, or serve its own process, out of the local limits of such jurisdiction. **SAGORE DUTT v. RAM CHUNDER MITTER**

[1 Hyde, 186]

5. ——— Civil Procedure Code (Act X of 1877), s. 649.—Although the High Court in its Appellate Side does not, as a general rule, execute its own decrees or orders, yet this circumstance in no way affects the vitality of its jurisdiction in this respect, and it cannot therefore be included among Courts which have ceased to have jurisdiction to execute decrees as specified under section 649 of the Code of Civil Procedure. **HURBO PERSHAD ROY v. BRUPENDRO NARAIN DUTT**

[I. L. R., 6 Calc., 201; 7 C. L. R., 79]

6. ——— Power to relieve judgment-debtor in Small Cause Court.—The High Court is not authorised by law to interfere for the relief of a necessitous judgment-debtor whose salary has been attached in execution of a decree of a Small Cause Court. **HARRIS v. BRITAIN**

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7. ——— Appellate Jurisdiction of High Court.—*Law in Subordinate Courts.*—The High Court in its appellate jurisdiction is bound to administer the law as it subsists in the subordinate Courts. **COLLECTOR OF THANA v. BHASKAR MAHADEV SHETH**

I. L. R., 8 Calc., 264

8. ——— Sonthal Pergunnahs.—*Act XXXVII of 1865, s. 2.—Civil Procedure Code (Act XIV of 1863), ss. 1 and 3.*—An appeal lies to the High Court from the Sonthal Pergunnahs in all civil suits in which the matter in dispute is over Rs. 1,000 in value. **SORBOJIT ROY v. GONESH PRASAD MISER**

I. L. R., 10 Calc., 761

9. ——— Appeal in criminal cases.—The High Court has no jurisdiction to entertain appeals in civil suits tried in the Sonthal Pergunnahs. **SURDHARE LOUL v. MANMOOH ALLY KHAN**

I. L. R., 3 Calc., 298

(b) CRIMINAL.

10. ——— Appeal in criminal case.—*Superintendent of Cachar.*—The High Court had no jurisdiction to hear an appeal from a conviction and sentence by the Superintendent of Cachar in his capacity of Magistrate of the district. **QUEEN v. RADHAKISHEN SHIN**

W. R., 1864, Cr., 18

11. ——— Revision.—*Superintendent of Tributary Mahals.*—*Offence committed out of British India.*—The High Court has no power, either by way of appeal or revision, to interfere with a sentence passed by the Superintendent of the Tributary Mahals when exercising jurisdiction over offences committed in Mohurbun, a place not situated within the limits of British India. *Empress*

HIGH COURT, JURISDICTION OF—
*continued.***1. HIGH COURT, CALCUTTA—continued.****(b) CRIMINAL—continued.****Appeal in criminal case—continued.**

v. Keshub Mahajun, I. L. R., 8 Calc., 985; and Hurree Mahapatro v. Dinabundhu Patro, I. L. R., 7 Calc., 523, referred to. EMPRESS v. HURBO KOLM

[I. L. R., 9 Calc., 268]

2. HIGH COURT, MADRAS.**(a) CIVIL.**

12. ——— Power to sell immoveable property out of jurisdiction.—*Law before 1865.*—Prior to 1865 the High Court of Madras had power to execute a decree in a partition suit between Hindu inhabitants of Madras, by selling immoveable property situated in Chingleput District. **JAMUNA BHAI AMMAL v. SADAGOPA**

I. L. R., 7 Mad., 56

Reversing on review—**SADAGOPA v. JAMUNA BHAI AMMAL**

I. L. R., 5 Mad., 54

13. ——— Complaint against Governor and Council of Madras.—*21 Geo. III., c. 70, s. 5; 39 & 40 Geo. III., c. 79, s. 3; 4 Geo. IV., c. 71, s. 17.*—Section 3 of 39 & 40 George III., chapter 70, which provides that the Governor and Council at Madras shall enjoy the same exemption and no other from the authority of the Supreme Court at Madras as is enjoyed by the Governor General and Council from the jurisdiction of the Supreme Court at Calcutta, did not confer on the Supreme Court at Madras a jurisdiction over the Governor and Council of Madras similar to that conferred by 21 George III., chapter 21, section 5, on the Supreme Court at Calcutta over the Governor General and Council. *Held*, therefore, the High Court, Madras, had no jurisdiction to entertain an application based on a complaint of certain acts of the Governor and Members of the Council of Madras alleged by the complainant to be injurious and oppressive. **IN RE WALLACE**

I. L. R., 8 Mad., 24

(b) CRIMINAL.

14. ——— Jurisdiction under Local Act.—*Offence under Madras Act I of 1866.—Act making offence triable by Magistrate.*—*Power of Local Legislature.*—The prisoner was committed to a Criminal Sessions of the High Court for supplying liquor without a license, an act made punishable by Madras Act No. I of 1866. *Held* that the High Court had no jurisdiction, inasmuch as the Act which creates the offence declares it to be punishable by a Magistrate. **HOLLOWAY, J.**, dissented from the judgment. *Quære*,—Whether the Local Legislature has power to enact that a European British subject shall be punishable by a Magistrate on summary conviction for an offence newly created by the Local Legislature. **RABINA v. DONOGHUE**

5 Mad., 277

3. HIGH COURT, BOMBAY.**(a) CIVIL.**

15. ——— Exercise of extraordinary jurisdiction.—*Superintendence of High*

HIGH COURT, JURISDICTION OF—
*continued.***3. HIGH COURT, BOMBAY—continued.****(a) CIVIL—continued.****Jurisdiction under Local Act—continued.**

Court under s. 15, 24 and 25 Vict., c. 104.—Bom. Reg. II of 1827, s. 5, cl. 2.—Mamlatdars' Courts.—Bombay Act V of 1864.—Distinction between the High Court's extraordinary jurisdiction under clause 2 of section 5 of Regulation II of 1827, and its general power of superintendence under section 15 of Statute 24 and 25 Victoria, chapter 104, pointed out, and the occasion for the exercise of the former stated. The Mamlatdars' Courts, constituted under Bombay Act V of 1864, are Subordinate Civil Courts within the meaning of clause 2, section 5, Regulation II of 1827. The High Court has therefore power, in the exercise of its extraordinary jurisdiction, to set aside an order made by a Mamladar under Bombay Act V of 1864. **MAHADAJI GOVIND v. SONU BIN DAVLATA** . 9 Bom., 249

16. ——— Power of High Court as Court of original jurisdiction.—The High Courts are not Courts of ordinary original civil jurisdiction over the whole of the territories of the presidencies to which they belong, and there is no presumption in favour of jurisdiction beyond what is found expressly conferred by the Charters. **SUGANCHAND SHIVDAS v. MULCHAND JOHARIMAL** [12 Bom., 113

17. ——— Inhabitant of Baroda carrying on business in Bombay by munim.—*Charter of Supreme Court, Bombay, s. 41.—Subject to process of High Court.*—An inhabitant of Baroda, who carries on the business of a banker at Bombay by a munim, and has a place of business there, is constructively an inhabitant of Bombay, and as such is subject to the orders and process of the High Court in the exercise of its Equity jurisdiction, as provided by section 41 of the Charter of the late Supreme Court, and continued to the High Court by the Act under which it was established. **HURIVALLAB DAS KALLIAN DAS v. UTTAMCHAND MANIKOHAND. IN RE GOPALRAV MYRAL** . 8 Bom., O. C., 286

(b) CRIMINAL.

18. ——— European British subject.—*Offence committed in foreign territory.—Penal Code.*—A European British subject is liable to be tried in the High Court of Bombay for an offence against the Penal Code committed in the territories of a Native Prince in alliance with Government upon charges framed under the Penal Code. **Rsg. v. CHILL** . 8 Bom., Cr., 92

19. ——— Criminal cases sent from Zanzibar.—*Stat. 6 & 7 Vic., c. 94.—Stat. 28 & 29 Vic., c. 116.—Stat. 29 & 30 Vic., c. 87.—Order in Council of 9th August 1866.*—The High Court at Bombay has jurisdiction to try a prisoner accused of having committed murder at Zanzibar, and sent by the British Consul at Zanzibar for trial to Bombay. **EMPRESS v. DOSSAJI GULAM HUSEIN** [I. L. R., 3 Bom., 334

HIGH COURT, JURISDICTION OF—
*continued.***3. HIGH COURT, BOMBAY—continued.****(b) CRIMINAL—continued.**

20. ——— Court of Judicial Superintendent of Railways at Secunderabad.—*Sanction of proceedings.—Subsequent sanction, Effect of.—Irregular commitment accepted by High Court.—Criminal Procedure Code (X of 1882), ss. 197 and 532.—Power of Court of Judicial Superintendent of Railways to commit to High Court.—Charges preferred by Advocate General.—Letters Patent, 1865, cl. 24.—European British subjects.*—The provisions of the Code of Criminal Procedure (X of 1882) apply to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions held at Secunderabad. Where, after a magisterial inquiry, a European British subject, being a public servant within the meaning of section 197 of the Criminal Procedure Code (X of 1882), was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions without any previous sanction having been obtained as required by that section,—*Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect; but *held*, also, that the provisions of section 532 of the Criminal Procedure Code applied, and that the Judge presiding at the Criminal Sessions of the High Court had power, in his discretion, to accept the commitment, and to proceed with the trial of the prisoner. *Per* **SARGENT, C. J.**—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is subordinate to the High Court of Bombay in all criminal matters relating to European British subjects. *Per* **BAYLEY, J.**—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is not subject to the superintendence of the High Court of Bombay within the meaning of clause 24 of the Letters Patent, 1865, and a prisoner committed by the former Court for trial by the High Court cannot be tried on charges preferred by the Advocate General under that clause. **QUEEN-EMPRESS v. MORTON** [I. L. R., 9 Bom., 286

21. ——— European British subjects at Secunderabad.—*Criminal Procedure Code, 1882, s. 526.—Act III of 1884, s. 11.—Transfer of criminal case.*—The High Court of Bombay having been vested by notification of the Governor General of India in Council, No. 178 of 23rd September, 1874, with original and appellate criminal jurisdiction over European British subjects, being Christians, resident, amongst other places, at Secunderabad, outside the Presidency of Bombay and within the territories of His Highness the Nizam of Hyderabad, the Cantonment Magistrate of Secunderabad, in his character of a District Magistrate, is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad within the contemplation of section 526 of the Code of Criminal Procedure, Act X of 1882, as amended by Act III of 1884, section 11: and the High Court possesses, by virtue of the appellate jurisdiction so vested in it, the power of transferring a criminal case pending in the Can-

HIGH COURT, JURISDICTION OF—
*continued.***3. HIGH COURT, BOMBAY—continued.****(b) CRIMINAL—continued.****European British subjects at Secunderabad—continued.**

tonment Magistrate's Court either to itself or to any criminal Court of equal or superior jurisdiction. The High Court, by an order under section 526 of the Criminal Procedure Code (Act X of 1882), transferred the present case of defamation from the Court of the Cantonment Magistrate at Secunderabad to the High Court for trial, on the ground that no machinery for a trial by jury existed at Secunderabad. *QUEEN-EMPRESS v. EDWARDS*. . . I. L. R., 9 Bom., 333

HIGH COURT, POWER OF—*See* CONVICTION. I. L. R., 8 Calc., 560*See* ENGLISH COMMITTEE.

[10 B. L. R., 79, 80, 82, note

See CASES UNDER REVISION—CRIMINAL CASES.*See* CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES.*See* CASES UNDER SUPERINTENDENCE OF HIGH COURT.*See* CASES UNDER TRANSFER OF CIVIL CASE.*See* CASES UNDER TRANSFER OF CRIMINAL CASE.**——— To appoint guardian.***See* GUARDIAN—APPOINTMENT, &c.

[I. L. R., 2 Calc., 357

——— To enlarge time for appeal.*See* APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

[I. L. R., 2 Calc., 128, 272

23 W. R., 220

I. L. R., 6 All., 250

I. L. R., 10 Calc., 557

——— To hear appeals.*See* BENGAL CIVIL COURTS ACT, 1871.

[I. L. R., 3 Calc., 662

See LETTERS PATENT, CL 16.

[I. L. R., 3 Calc., 662

——— To interfere with verdict of jury.*See* CASES UNDER REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION.*See* CASES UNDER VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.**——— To issue mandamus.***See* CASES UNDER MANDAMUS.*See* TRANSFER OF CRIMINAL CASE—GENERAL CASES. I. L. R., 2 Calc., 278**HIGH COURT, POWER OF—continued.****——— To reduce amount of recognizances.***See* RECOGNIZANCE TO KEEP PEACE—FORFEITURE OF RECOGNIZANCES.

[I. L. R., 3 Calc., 757

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1. REQUISITES FOR ADOPTION.**(a) SANCTION.**

1. ——— Gift and acceptance.—*Valid adoption.*—To constitute a valid adoption there must be a gift and an acceptance. *COLLECTOR OF SURAT v. DEBHSINGJI VAGHRAJI*. . . 10 Bom., 285

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2. ——— Sanction of ruling power.—*Adoption otherwise valid.*—*Consent of ruling power.*—*Succession to service watan.*—A formal adoption is not invalid because it has not received the sanction of the ruling power, and (where the ruling power does not interfere) an adoption without such sanction entitles the adopted son to succeed to property of the nature of a service watan. *RAMCHANDRA VASUDEVI v. NANAJI TIMAJI*. . . 7 Bom., A. C., 26

3. ——— Sanction of Government.—*Adoption by Kulkarni.*—*Act XI of 1843.*—*Bom. Act III of 1874, ss. 33, 34, and 35.*—The sanction of Government to an adoption by a Kulkarni or his widow, or by a co-parcener in a Kulkarniship or his widow, is not necessary to give it validity, nor has Government any right to prohibit or otherwise intervene in such an adoption. *NARHAR GOVIND KULKARNI v. NARAYAN VITHAL*. . . I. L. R., 1 Bom., 607

4. ——— Registration.—*Requisite for valid adoption.*—According to Hindu law, neither registration of the act of adoption nor any written evidence of that law having been completed is essential to its validity. *SUTBOOGUN SUTPUTTY v. SABITHA DIX*. . . 5 W. R., P. C., 109

(b) AUTHORITY.

5. ——— Adoption made without authority.—*Invalid adoption.*—There can be no gift in adoption where there is an absence of authority, the attempt to give being a mere nullity. There is nothing in such an attempted transaction to set aside, it should simply be declared null and void *ab initio*. *LAKSHMAPPA v. RAMAYA*. . . 12 Bom., 364

6. ——— Mode of giving authority.—*Verbal authority.*—According to Hindu law a power to adopt may be given verbally. *SOONDER KOOMARE DEBBA v. GUDADHUR PERSHAD TEWARRE*
[4 W. R., P. C., 116: 7 Moore's I. A., 54]

7. ——— Absence of prohibition.—*Presumption.*—*Permission to adopt.*—Held that the doctrine of Hindu law that a "permission is to be presumed in the absence of prohibition" (Dattaka Chandrika, section 1, verse 32) relates to a giver, and not to a receiver in adoption. *TARINI CHURN CHOWDHRY v. SARODA SUNDARI DAS*
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HINDU LAW—ADOPTION—continued.**1. REQUISITES FOR ADOPTION—continued.****(b) AUTHORITY—continued.**

8. ——— Power to adopt.—*Presumption of authority.*—*Proof of power to adopt.*—*Adoption on contingency.*—Circumstances under which a Court will require strict proof of power to adopt, and under which it will assume the power to have been given. The acquiescence of parties interested in opposing an adoption is not *prima facie* evidence of its validity. The precise contingency contemplated by the donor of the power must happen to make an adoption valid. *MOHINDROLALL MOOKERJEE v. ROOKINNY DABBE*
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9. ——— Presumption from acquiescence.—*Consent to adoption.*—Where an adoption had been acquiesced in for a period of thirty-three years, it was presumed that the necessary consent of some person competent to give away the adopted son had been obtained. *ANANDRAV SIVAJI v. GANESH ESHVANT BOKIL*. . . 7 Bom., Ap., 33

10. ——— Proof of authority to adopt.—*Ceremonies.*—*Presumption.*—The Court, when it is satisfied that permission to adopt exists, will exact slight proof of the performance of ceremonies: but it cannot conversely, from the observance of ritual forms, infer that the husband's authority, which is essential in cases of adoption by a Hindu widow, has been really obtained. *RADHAMADHUB GOSSAIN v. RADHABULLUB GOSSAIN*
[2 Ind. Jur., O. S., 5: 1 Hay, 311]

11. ——— Presumption of consent.—*Acts of adoptive mother.*—When a Hindu lady adopted a son in the lifetime of her husband, the fact that she carried on a law-suit during his lifetime, calling herself his wife and the mother of the adopted son, and that neither the husband nor any one else denied the adoption, would be strong corroborative evidence that the adoption was made not only with the husband's consent, but that the ceremonies usual on the occasion of an adoption were done in his actual presence. *TINCOOWRIE CHATTERJI v. DENONATH BANERJEE*. . . W. R., 1864, 155

12. ——— Proof of authority to adopt.—*Adoption by widow to deceased husband.*—*Proof of.*—In an adoption made by a Hindu widow, under authority conferred upon her for that purpose by her husband, the authority must be strictly proved, and as the adoption is for the husband's benefit, the child must be adopted to him, and not to the widow alone. An adoption by the widow alone would not, for purposes of Hindu law, give the adopted child, even after her death, any right to property inherited by her from her husband. *Held* in the present case, that the evidence did not support the contention that the adopted son of the widow had been adopted to the husband. *CHOWDHRY PADAM SINGH v. KORE UDAYA SINGH*. . . 2 B. L. R., P. C., 101
[S. C. 12 W. R., P. C., 1
12 Moore's I. A., 350]

13. ——— Reference to deed in subsequent deed.—When a subsequent deed of

HINDU LAW—ADOPTION—continued.**1. REQUISITES FOR ADOPTION—continued.****(b) AUTHORITY—continued.****Proof of authority to adopt—continued.**

permission to adopt was proved, a distinct reference made in it to a former deed of the same character which corresponded in every particular with the description of it given in the subsequent instrument, was, in the absence of proof of the existence of any other document, or of anything calculated to throw doubt on the former instrument, held sufficient to establish its identity. **KISHEN SUNKUB DUTT v. MOHA MYA DOSSEE** . . . **W. R., 1864, 210**

14. ————— Evidence of adoption and power to adopt.—A writing under the hand of a deceased husband declaring that he gave his wife power to adopt, though not complete as a testamentary disposition, may yet be evidence of a declaration of fact. **BROJOKISHORE DASSEE v. SEENATH BOSE** . . . **9 W. R., 463**

(c) CEREMONIES.

15. ————— Ceremony of putrestee jag.—*Consent of person adopted.*—*Superior castes.*—The performance of the putrestee jag is essential to the validity of an adoption in the Dattaka form, at least among the three superior castes. The consent of the party adopted is essential to the validity of an adoption in the Krittima form. **LUCHMUN LALL v. MURUN LALL BHAYA GAYAL** . . . **16 W. R., 179**

16. ————— Ceremony of datta homam.—*Brahmans.*—*Semle.*—The ceremony of datta homam is, among Brahmans, an essential element in adoption. **SINGAMMA v. VINJAMURI VENKATACHARLU** (4 Mad., 165), questioned. **VENKATA v. SUBHADRA** [I. L. R., 7 Mad., 543]

17. ————— Brahmans.—*Giving and receiving child.*—In order to establish a valid adoption in a Brahman family, proof of the performance of the datta homam is not essential. The giving and receiving a boy who is capable of being adopted is sufficient to constitute a valid adoption according to Hindu law. **SINGAMMA v. VINJAMURI VENKATACHARLU . . . **4 Mad., 165****

18. ————— Dakkhani Brahmans.—In the case of Dakkhani Brahmans, the "datta homam" or any other religious ceremony is not required to give validity to the adoption of a brother's son: the giving and taking of the child is sufficient for that purpose. **ATMARAM v. MADHO RAO [I. L. R., 6 All., 276]**

19. ————— Place for performance of ceremony.—Although, according to the Dattaka Mimamsa, the ceremony of homa, or burnt-offering, is an essential part of adoption, it is not necessary that it should take place in the dwelling of the adopted. **OOMRAO SINGH v. MAHTAB KOONWAR . . . **3 Agra, 103****

20. ————— Ceremonies in case of Sudras.—*Necessity for ceremony.*—*Quare.*—Whether religious ceremonies are necessary to make an adop-

HINDU LAW—ADOPTION—continued.**1. REQUISITES FOR ADOPTION—continued.****(c) CEREMONIES—continued.****Ceremonies in case of Sudras—continued.**

tion valid among Sudras? **SRINARAIN MITTER v. KISHEN SOONDREY DASI** . . . **11 B. L. R., 171**
[I. R., I. A., Sup. Vol., 149]

S. C. NUGGENDEO CHUNDER MITTRO v. KISHEN SOONDREY DASSEE . . . **19 W. R., 183**

21. ————— Necessity for ceremonies.—A Hindu Sudra adopted the plaintiff, his brother's son, in 1247 (1840), who, upon the death of his adoptive father, performed his sraddh and obtained possession of all his property as such adopted son. The adoption had not been questioned except in 1256 (1849), when the defendant sued the plaintiff, who was then still a minor, through his guardian, and obtained possession from the plaintiff of certain of the property of the deceased, on the ground that the adoption was invalid. The plaintiff now, within twelve years of such dispossession, sued to recover possession, stating that the decree in the former suit had been obtained by the defendant in collusion with the guardian. The defence was, that the adoption was invalid, the proper ceremonies not having been performed. The Court refused to entertain such defence. *Per* **BATLEY, J.**—Ceremonies which are necessary to be observed for a valid adoption among Hindus of the superior classes are not necessary in the case of an adoption by a Sudra. In the case of adoption by a Sudra of a brother's son, mere giving and taking may be sufficient to make the adoption valid. **NITTANUND GHOSH v. KRISHNA DOYAL GHOSH** . . . **7 B. L. R., 1; 15 W. R., 300**

22. ————— Necessity of ceremonies.—Among Sudras in Bengal, no ceremonies in addition to the giving and taking of the child are necessary to constitute a valid adoption. **BEHARI LAL MULLICK v. INDRAMANI CHOWDHURANI** [13 B. L. R., F. B., 401; 21 W. R., 285]

Affirmed on appeal in **INDRAMANI CHOWDHURANI v. BEHARI LAL MULLICK** [I. L. R., 5 Calc., 770; 6 C. L. R., 183; L. R., 7 I. A., 24]

Overruling **BHAIRUBHAI SYE v. MOHESH CHANDRA BHADURY** [4 B. L. R., A. C., 162; 13 W. R., 168]

23. ————— Adoption by widow under pollution.—Among Sudras no religious ceremonies are essential to adoption, and consequently an adoption by a Sudra widow under pollution is not invalid. **THANGATHANNI v. RAMU** [I. L. R., 5 Mad., 353]

24. ————— Ceremonies to complete adoption.—In a suit for confirmation of a right to adopt a son and to cancel deeds of agreement to give and receive the defendant's son in adoption,—*Held* that to complete an adoption there must be an actual giving and receiving, and that the execution of the deeds was not sufficient. **SRINARAIN MITTER v. KISHEN SOONDREY DASI** [2 B. L. R., A. C., 279; 11 W. R., 196]

HINDU LAW—ADOPTION—continued.**1. REQUISITES FOR ADOPTION—continued.****(c) CEREMONIES—continued.****Ceremonies in case of Sudras—continued.**

In the same case on appeal to the Privy Council it was, however, held that the execution of the deeds, if they were deeds of gift and adoption, and not mere agreements to give and adopt, was sufficient, and that the fact that they were not interchanged was not necessary or important. **SREENARAIN MITTER v. KISHEN SOONDERY DASSEE**. 11 B. L. R., 171 [L. R., I. A., Sup. Vol., 149]

SIDDHESWARY DAS v. DOORGA CHURN SETT
[2 Ind. Jur., N. S., 22 : Bourke, O. C., 360]

25. ——— Execution of mutual deeds.—Actual giving and taking of child.—Although it has been held that, in the case of Sudras, no ceremonies except the giving and taking of the child are necessary to an adoption, yet it is not to be taken for granted, that such giving and taking can be completed by the execution of mutual deeds without more ; but, *semble*, that, according to Hindu usage, which the Courts should accept as governing the law, the giving and taking in such an adoption ought to take place by the father handing over the child to the adoptive mother, the latter intimating her acceptance of the child in adoption. In this case it was found on the evidence that it was not the intention of the parties to complete the adoption by the mere execution of the deeds. **SHOSHINATH GHOSH v. KRISHNASUNDARI DAS**

[I. L. R., 6 Cal., 381 : 7 C. L. R., 313
L. R., 7 I. A., 250]

26. ——— Ceremonies in case of Kahatriyas.—Necessity of religious ceremonies.—Among Kahatriyas in the Madras Presidency adoption without religious ceremonies is valid.—**Singamma v. Vinjamuri Venkatacharlu** (4 Mad., 165), followed. **CHANDRAMALA PATTI MAHADEVI v. MURTHALA PATTI MAHADEVI**. I. L. R., 6 Mad., 20

27. ——— Necessity for performance of ceremonies.—Construction of will.—Gift.—G., a childless Hindu, by his will, directed as follows :—“ And as I am desirous of adopting a son, I declare that I have adopted K., third son of my eldest brother. My wives shall perform the ceremonies according to the shastras and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property, moveable and immoveable, in my own name or benami, left by me, also that adopted son. When he comes to maturity the executors shall make over everything to him to his satisfaction.” “God forbid, but should this adopted son die, and my younger brother Nilrutton have more than one son, then my wives shall adopt a son of his. If at that time Nilrutton has not a son eligible to adoption, they shall adopt another son of Saroda, and the wives and executors shall perform all the aforementioned acts.” In a suit by one of G.’s widows as heir of her husband to set aside his will and recover half his property, it appeared that the above-mentioned ceremonies had been performed by one widow only,—*Held* that according to the true construction

HINDU LAW—ADOPTION—continued.**1. REQUISITES FOR ADOPTION—continued.****(c) CEREMONIES—continued.****Necessity for performance of ceremonies—continued.**

of the will (which was established by the evidence) there was a gift of his property by the testator to a designated person independently of the performance of the ceremonies. *Quare*,—Whether the performance of the ceremonies was essential to the completeness of the adoption ; and if so, whether one widow was effectually empowered to perform them. **NIDHOMONI DEBYA v. SARODA PRESHAD MOOKERJEE**
[L. R., 3 I. A., 253 : 26 W. R., 21]

28. ——— Proof of performance of ceremonies.—Evidence.—In a case to set aside an adoption, on the ground that the ceremonies had not been performed, where there was satisfactory evidence showing that the adoption had been continuously recognised for a series of years, and that the party adopted had been in possession, either in person or through his guardian, of the property in dispute,—*Held*, that the Court might well dispense with formal proof of the performance of the ceremonies, unless it were distinctly proved, on the part of the plaintiff, that the ceremonies had not been performed. **SABO BEWA v. NAHAGUN MAITI**

[2 B. L. R., Ap., 51 : 11 W. R., 390]

CHOWDERY HERRASUTOOLAH v. BROJO SOONDUR ROY. 18 W. R., 77

29. ——— Authority to adopt.—The Court when it is satisfied that permission to adopt existed, will exact slight proof of performance of ceremonies ; but it cannot conversely, from the due observance of ritual forms, infer that the husband’s authority has been really obtained. **RADHAMADHUB GOSSAIN v. RADHABULLUB GOSSAIN**

[1 Hay, 311 : 2 Ind. Jur., O. S., 5]

30. ——— Subsequent performance of ceremonies.—Omission to perform ceremonies at adoption.—*Quare*,—Whether, where the ceremonies of an adoption are not performed at the proper time, the omission can be subsequently supplied. **INDROMANI CHOWDERAIN v. BHARILAL MULLICK**

[I. L. R., 5 Cal., 770 : 6 C. L. R., 183
I. L. R., 7 I. A., 24]

2. WHO MAY ADOPT.

31. ——— Childless Hindu.—Obligation to adopt a son.—A childless Hindu is bound to adopt a son if at all anxious for his own salvation, and what is required to be done for that end is not optional with him, but an imperative obligation. **RAJENDRO NARAIN LAHOREE v. SARODA SOONDUREE DEBYA**
[15 W. R., 548]

32. ——— Husband or widow after his death.—Modes of adopting.—An adoption may be made either by a man in his lifetime, or by one of his wives after his death under a power conferred upon her for that purpose by her husband. **HURRABHUN MOOKERJEE v. MOTHORANATH MOOKERJEE**
[7 W. R., P. C., 71 : 4 Moore’s I. A., 414]

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.**

33. — Widow succeeding as heir of son.—*Effect of, on right to adopt.*—A widow succeeding as heir to her own son does not lose the right to exercise the power of adoption. *BYKANT MONEE ROY v. KRISTO SOONDEREE ROY*

[7 W. R., 392]

34. — Giving in adoption.—*Mother.*—*Paternal grandfather.*—When the natural father is dead and the mother is living, she is the only person who can give in adoption. The Hindu law does not authorise the paternal grandfather or any other person to give in adoption in such a case. *COLLECTOR OF SURAT v. DHIRSHINGJI VAGHBHAI*

[10 Bom., 235]

See *KENCHAWA v. NINGAPA*

[10 Bom., 235, note]

35. — Joint giving by father and mother.—*Brother.*—*Consent of father.*—Amongst Hindus in the Presidency of Bombay, a valid gift in adoption can be made only by the natural father or mother of the son given or by them both conjointly. They cannot jointly or severally delegate that authority to another person so as to validate a gift by him, made after they are both deceased. Therefore, a gift in adoption by the brother of the adoptee after the decease of his father and mother, though made with the previous assent of his father, was held to be invalid. *BASHOTIAFFA BIN BASLINGAPPA v. SHIVLINGAPPA BIN BALLAPPA*

[10 Bom., 263]

36. — Adoption among Jains.—*Deed of adoption, Validity of.*—*Authority of widow.*—*A. B.*, a member of the community of Jains of Marvadi origin, who form part of the inhabitants of Ahmadnagar in the Deccan, died without leaving natural born issue and without adopting any child. His wife, who survived him, resolved shortly before her death on adopting the son of *C. D.*, a brother of *A. B.*, but did not live to carry her intention into effect. After her death, *C. D.* and *E. F.* (another brother of *A. B.*), with the assent of the Panch or senior members of their community, went through a ceremony of giving the boy in adoption to the deceased *A. B.* and his deceased wife, and an instrument of agreement wholly founded upon that adoption was executed by *E. F.* to *C. D.*, and affected to deal with the property, moveable and immovable, of *A. B.*.—*Held* that the adoption was invalid, and that the instrument of agreement fell together with it. Adoption among Jains is, in the Presidency of Bombay, regulated by the ordinary Hindu law, as is their succession to property generally, notwithstanding their divergence from Hindus in matters of religion; and Hindu law does not allow any one but the widow to act vicariously for the man to whom the son is to be affiliated; the widow is a delegate either with express or implied authority, and cannot extend that authority to another person, so as to enable him to adopt a son to her husband after her decease; not only a giving but an acceptance by the man or his wife or widow, manifested by some overt act, being necessary

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Adoption among Jains—continued.**

to constitute an adoption by Hindu law. *BHAGVANDAS TEJMAL v. RAGMAL alias HIRALAL LACHMI-ANDAS* 10 Bom., 241

37. — Members of Talabda Koli caste.—*Absence of spiritual motives for adoption.*—It is not a necessary consequence of the circumstance that the spiritual motive for adoption, which exists amongst the higher castes of Hindus, has no influence upon the Talabda Koli caste, that its members may not lawfully adopt. *BHALA NAHANA v. PARBHU HARI* I. L. R., 2 Bom., 67

38. — Naikins (dancing girls).—*Adoption, Invalidity of.*—*Want of presupposition of husband.*—The plaintiff and the defendants were naikins. The plaintiff, as the adopted daughter of the first defendant, sued to recover a share of the property in the hands of her adoptive mother which she (plaintiff) alleged to be family property. *Held* that adoption by naikins cannot be recognised by Courts of Law, and confers no right on the person adopted. An adoption by a woman presupposes a husband to whom she adopts as her representative, and a naikin, while she remains a naikin, can have no husband. *MATHURA NAIKIN v. ESU NAIKIN*

[I. L. R., 4 Bom., 545]

39. — Adoption by minor.—*Power of minor to adopt or give permission to adopt.*—*Age of discretion.*—According to the Hindu law prevalent in Bengal, a lad of the age of fifteen is regarded as having attained the age of discretion, and as competent to adopt, or to give authority to adopt, a son. *JUMOONA DASRYA v. RAMASUNDARI DASRYA*

[I. L. R., 1 Calo., 289; 25 W. R., 235]

L. R., 3 I. A., 72

40. — Age of discretion.—An adoption is not invalidated by the mere fact of the adoptive father being a minor, if he has attained the years of discretion. Such an adoption is not attended by any civil disability. *RAJENDRO NARAIN LAHOREE v. SARODA SOONDUREE DEBIA*

[15 W. R., 548]

41. — Adoption by widower.—*Validity of adoption.*—An adoption by a widower is valid according to Hindu law. *NAGAPPA UDAPA v. SUBBA SASTRY* 2 Mad., 367

CHANDVASEKHARUDU v. BRAMHANNA

[4 Mad., 270]

42. — Adoption by man who has never married.—*Validity of adoption.*—*Sembla.*—The Hindu law does not prohibit an adoption by a man who has not been married. *CHANDVASEKHARUDU v. BRAMHANNA* 4 Mad., 270

43. — Adoption by husband with knowledge of wife's pregnancy.—*Validity of adoption.*—An adoption by a Hindu with knowledge of his wife's pregnancy is not invalid. *Narayana Reddi v. Vardachala Reddi, Mad., S. D. A., 1859, p.*

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Adoption by husband with knowledge of wife's pregnancy—continued.**

97, dissented from. *NAGABHUSHANAM v. SESHAMA GARU* . . . I. L. R., 3 Mad., 180

44. ——— **Vaishya who has undergone the ceremony of Vibhut Vida.**—*Custom as to incapability to adopt.*—There is nothing in the books of authority amongst Hindus to show that a Vaishya who has undergone the ceremony of Vibhut Vida is incapable of adopting a son. If a custom to that effect exists, it should be proved by satisfactory evidence. *MEALSARAI v. VITHOBA KHANDAPPA GULVE* . . . 7 Bom., Ap., 26

45. ——— **Adoption by leper.**—*Validity of adoption.*—The Hindu law does not prevent a leper from giving his son in adoption. *ANUND MOHUN MOZOOMDAR v. GOBIND CHUNDER MOZOOMDAR* . . . W. R., 1864, 173

46. ——— **Person under pollution from death of relative.**—*Validity of adoption.*—Objection that the respondent's adoption was not valid because the adopted son was the son of a sister, and also because it was made when the adopter was under pollution in consequence of the death of a relative. Upon a conflict of evidence as to the time of the relative's death, the Privy Council decided in favour of the respondent. The period of pollution according to Hindu law is sixteen days. *RAMALINGA PILLAI v. SUDASIVA PILLAI* 1 W. R., P. C., 25 [9 Moore's I. A., 506]

47. ——— **Unchaste widow.**—*Incompetency to adopt.*—A Hindu widow, who has become unchaste, is living in concubinage, and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption. *SAYAMALAL DUTT v. SAUDAMINI DAS* . 5 B. L. R., 362

But see *THANGATHAMIR v. RAMA*

[I. L. R., 5 Mad., 356 where the parties, however, were Sudras.

48. ——— **Unchastity of widow after vesting of estate, Effect of, on power of adoption.**—*Suit to set aside adoption.*—One G. died, leaving him surviving his widow Y. and his undivided son E., who subsequently also died, leaving him surviving his widow P. and a son V. who died shortly afterwards. Y. adopted the plaintiff, and immediately afterwards P. adopted the defendant. The plaintiff sought to set aside the adoption of the defendant, alleging that it was invalid, inasmuch as it took place subsequently to his own adoption, and because of P. being an unchaste widow. The Court of first instance rejected the plaintiff's suit, holding his adoption invalid. The lower Appellate Court reversed the decree of the Court of first instance, and remanded the suit for re-trial. From this order of remand the defendant appealed. On appeal to the High Court—*Held*, that the adoption of the plaintiff was invalid. After the death of E. his estate vested in his widow P., the adoptive mother of the defendant. Her existence and the vesting in her of

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Unchaste widow—continued.**

her husband's estate rendered the elder widow Y. incapable of adopting. The estate, having thus vested in P., would not be divested by her subsequent unchastity, and, therefore, the inquiry into her chastity was irrelevant. *KESHAV RAMKRISHNA v. GOVIND GONESH* . . . I. L. R., 9 Bom., 94

49. ——— **Adoption by widow, but ceremonies performed by deputy by uncle.**—*Validity of adoption.*—Where a mother, in pursuance of the promise of her deceased husband, allowed her son to be adopted, but did not herself attend at the adoption ceremonies to give him in adoption, but commissioned her uncle to give the boy on her behalf, it was held that the adoption was not on that account invalid. *VIJILARANGAM v. LAKSHUMAN* [8 Bom., O. C., 244]

50. ——— **Adoption with consent of father, but ceremonies performed by deputy.**—*Validity of adoption.*—Where the father of a boy gave his formal consent to the adoption of his son, but was prevented by sickness from attending the adoption ceremony, and delegated to his brother the duty of making the presentation, it was held that the adoption was nevertheless valid. *JAMNABAI v. RAYCHAND NAHALCHAND* . I. L. R., 7 Bom., 239

51. ——— **Adoption made by brother in pursuance of father's agreement.**—*Validity of adoption.*—In pursuance of a promise made by his father, A. gave his younger brother away in adoption:—*Held* that the gift was valid. *VENKATA v. SUBHADRA* . . . I. L. R., 7 Mad., 548

52. ——— **Son, Adoption by.**—*Son's power to adopt.*—*Impartible estate.*—*Failure to prove alleged custom in a family against adoption.*—*Invalid agreement between father and father's brother, in a joint family, contrary to rights of son already born.*—Two brothers, undivided under the Mitakshara, the family estate being an impartible zemindari in the possession of one of them who had a son, contracted with each other that, in the event of an indefinite failure of male issue in the line of either of them, the estate should descend in the line of the brother having aurasa (self-begotten) issue, and should not be alienated from the line of the latter by adoption:—*Held* that this contract did not bind the son not to adopt, or exclude from the inheritance a son adopted by him. Such a stipulation was contrary to the law declared in the *Tagore case*, 9 B. L. R., 377, and was ineffectual to prevent the son's exercising his right of adoption. *SURIYA RAU v. RAJA OF PITTAPUR* . . . I. L. R., 9 Mad., 499 [I. R., 13 I. A., 97]

53. ——— **Adoption by wife.**—*Sanction to wife to adopt in husband's lifetime.*—According to the highest authorities in repute in the Maratha country, the express sanction of the husband is indispensable to render valid an adoption made by the wife in his lifetime. Comparative weight, as legal authorities on this side of India on the question of

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Adoption by wife—continued.**

adoption, of the Mitakshara, Mayakha, Dattaka Mimamsa, Dattaka Chandrika, Smriti Chandrika, Viramitrodaya, Dharmasindha, and the Nirayasinidha pointed out. Dictum in the case of *Collector of Madura v. M. Ramalinga Sathapati*, 2 Mad., 220, "that the opinion of Devanda Bhatta must have been that the assent of the husband stood upon precisely the same footing, and was of the same scope, in the cases of giving and receiving" (by the wife in adoption) questioned. *NARAYAN BABAJI v. NANA MANOHAR* . . . 7 Bom., A. C., 158

54. ——— Power of wife to give in adoption.—Consent of Government to adoption.—Non-fulfilment of conditions of adoption.—Mistake.—According to the Hindu law prevailing in the Bombay Presidency, a wife is not competent to give her son in adoption against the will, express or implied, of her husband, the father of that son, or under circumstances from which the husband's dissent can be inferred. *RANGUBAI v. BHOGIRETHIBAI* [I. L. R., 2 Bom., 377]

55. ——— Adoption by widow.—Authority of husband.—Consent of sapindas.—A widow cannot make a valid adoption without either the authority of her husband or the consent of the sapindas. *ARUNDADI AMMAL v. KUPPAMMAL* [8 Mad., 283]

56. ——— Authority of husband.—Ceremonies, Performance of.—In cases of adoption in the dattaka form, it must be proved that the widow had the authority of her husband to adopt, and that she made the adoption when the boy adopted was under six years of age, and with the prescribed ceremonies. *OOMRAO SINGH v. MAHTAB-KOONWAR* . . . 3 Agra, 103

57. ——— Authority of husband.—Bareilly law.—In the district of Bareilly the authority of the husband is essential to the validity of an adoption. *HAHMUN CHULL SINGH v. KOOMER GUNSEHAM SINGH* [5 W. R., P. C., 69]

58. ——— Prohibition by husband.—Effect of an adoption by widow.—Fraud.—Concealment of rights from widow.—A Hindu widow has no power to adopt a son to her deceased husband if she has been expressly prohibited from doing so by her husband in his lifetime. *Quare*, whether according to the Maratha school she can adopt without the authority of her husband given prior to his decease. Where a Hindu childless husband, when at the point of death, positively refused to adopt a son, and died without retracting that refusal, it was held that a subsequent adoption by his widow was null and void, as authority from her husband to adopt could not in such a case be implied (*per WESTROFF, J.*). Dictum of the High Court of Madras, "that the opinion of Devanda Bhatta must have been that the assent of the husband stood upon the same footing, and was of the scope, in the case of giving and receiving" (a son in adoption by the wife) questioned. Where an

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Adoption by widow—continued.**

adoption by a young Hindu widow is set up against her and to defeat her rights, the Court will expect clear evidence that at the time she adopted she was fully informed of those rights, and of the effect of the act of adoption upon them; and if it find that fraud or cajolery was practised upon the widow to induce her to adopt, or that there has been suppression or concealment of facts from her, it will refuse to uphold the adoption. *BAYABAI v. BALABUF VENKATESH RAMA KANT* . . . 7 Bom., Ap., 1

59. ——— Authority to adopt.—Kinemen, Consent of.—Prohibition to adopt.—According to the Hindu law current in the Dravida country, a widow not having her husband's permission may, if duly authorised by his kindred, adopt a son to him. The question, who are the kinsmen whose assent will supply the want of positive authority of the deceased husband? must depend upon the circumstances of the family in each case. There must be such evidence of the assent of the kinsmen as suffices to show that the act is done by the widow in the *bond fide* performance of a religious duty, and not capriciously, or from a corrupt motive. The widow cannot adopt where there is a prohibition by the husband, direct or implied. *COLLECTOR OF MADURA v. MUTTU RAMALINGA SATHUPATHY* [1 B. L. R., P. C., 1: 12 Moore's I. A., 397]

10 W. R., P. C., 17

S. C. in Court below *COLLECTOR OF MADURA v. MUTTU VIJAYA RAGUNADA MUTTU RAMALINGA SETHUPATHI. ANANDAYI alias KUNJARA NATCHIAR v. PARVATAYARDANI NATCHIAR* [2 Mad., 206]

60. ——— Mithila Law.—Consent of husband to adoption by widow.—Under the Hindu law current in Mithila, a Hindu widow has power to adopt a son in the *kritrima* form, with or without her husband's consent, but such son would not, by virtue of such adoption, lose his position in his own family, nor would he succeed to the property left by the husband of his adoptive mother, but would be considered her son, and entitled to succeed to her only. *COLLECTOR OF TIRHOOT v. HURBOFFERSHAD MOHUNT* . . . 7 W. R., 500

SHIBO KOORER v. JOOGUN SINGH. BOOLEH SINGH v. BUSUET KOORER . 8 W. R., 155

61. ——— Authority of husband.—Permission of relatives or younger widow.—Maratha country.—In the Maratha country a Hindu widow may, without the permission of her husband, and without the consent of his kindred, adopt a son to him if the act is done by her in the proper *bond fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. An elder Hindu widow has the power to adopt a son to her deceased husband without the consent of a younger widow. *RAKHMABAI v. RADEBABI* [5 Bom., A. C., 181]

HINDU LAW—ADOPTION—continued.**3. WHO MAY ADOPT—continued.****Adoption by widow—continued.**

62. ————— *Consent of kinsmen.—Divesting of estate.*—Although, as a general rule, the adoption by a Hindu widow of a son to her deceased husband is in the Maratha country good without the consent of her husband's kinsmen, when the estate of her husband is vested in her or in her and her co-widow jointly, yet when such adoption has the effect of divesting an estate already vested in a third person *e.g.*, the widow of her husband's deceased brother, the consent of such third person would appear to be necessary to give validity to such an adoption. *Rakhmabai v. Radhabai*, 5 Bom., A. C., 181, and *Collector of Madura v. Mutu Ramalinga Sathupathy*, 12 Moore's I. A., 397, commented on and compared. *RUPCHAND HINDUMAL v. RAKHMABAI* [8 Bom., A. C., 114

63. ————— *Consent of relatives.*—The doctrine that the consent of all her husband's relatives is requisite to make an adoption by a Hindu widow valid is erroneous. *GOPAL SHRIDHAR DIKSHIT PATVARDHAN v. NARO VINAYAK DIKSHIT PATVARDHAN* 7 Bom., Ap., 24

64. ————— *Permission of husband.—Theory of adoption.*—According to the law prevalent in the Dravida country, a Hindu widow, without having her husband's express permission, may, if duly authorised by his kindred, adopt a son to him. *Collector of Madura v. Mutu Ramalinga Sathupathy*, 12 Moore's I. A., 397, referred to and approved. *Semble.*—In the case of an undivided family the requisite authority to adopt must be sought within that family, and cannot be given by a single separated and remote kinsman. Speculations founded on the assumption that the law of adoption now prevalent in Madras is a substitute for the old and obsolete practice of raising up seed to a husband by actual procreation are inadmissible as a ground of judicial decision. *VIRADA PRATAPA RAGHUNADA DEO v. BROZO KISHORO PATTA DEO* I. L. R., 1 Mad., 69 [25 W. R., 291; I. L. R., 3 I. A., 154

S. C. in Court below BROZO KISHORO PATTA DEVO v. VARADHI VIRAPRATAPA SRI RAGHUNATHA DEVO 7 Mad., 301

65. ————— *Adoption in Dravida country.—Widow's power to adopt with consent of sapindas.—Motives for making adoption.*—According to the Hindu law, a widow who has received from her deceased husband an express power to adopt a son in the event of his natural-born son dying under age and unmarried, may on the happening of that event make a valid adoption. *Bhoobun Moyee Debia v. Ram Kishore Acharj Chowdry*, 10 Moore's I. A., 379, distinguished. Under the law which prevails in the Dravida country, a widow, without any permission from her husband, may, if duly authorised by his kinsmen, adopt a son to him in every case in which such an adoption would be valid if made by her under written authority from her husband. The observations of the Judicial Com-

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Adoption by widow—continued.**

mittee in the *Ramnad case*, 12 Moore's I. A., 397, to the effect "that there should be such evidence of the assent of kinsmen as suffices to show that the act [of adoption] is done by the widow in the proper and *bona fide* performance of a religious duty, and neither capriciously nor from a corrupt motive," considered and explained. *VELLANKI VENKATA KRISHNA RAO v. VENKATA RAMA LAKSHMI* [I. L. R., 1 Mad., 174 I. R., 4 I. A., 1: 26 W. R., 21

66. ————— *Authority of husband, express or implied.—Right of widow to adopt.—Assent of nearest sapindas.*—Without the express or implied authority of the husband, a widow may make a second adoption under the sanction of the nearest sapindas. With such sanction a second adoption would probably not be recognised as valid, in the face of an express prohibition of a second adoption on the part of the husband. When the only surviving members of the family are divided from the deceased husband, for whose benefit it is desired to make the adoption, and also from each other, and equally distant from the deceased, there seems nothing in principle to throw doubt upon the sufficiency of the assent of some of them if *bona fide* given, if it be shown that the consent of the others is refused from interested or improper motives or without a fair exercise of discretion. *PARASARA BHATTAR v. RANGARAJA BHATTAR* [I. L. R., 2 Mad., 202

67. ————— *Authority of husband.—Assent of sapindas.*—The sapinda of a deceased person gave his child to the widow of the latter to be adopted in pursuance of an authority which she represented herself to have had from her husband. This natural father of the child was the eldest and managing member of a joint family consisting of himself and his three younger brothers, sons of the first cousin of the deceased. The three younger brothers disputed the validity of the adoption. Two Courts having found against the existence of an authority to the widow given by her deceased husband, the question remained whether the manager giving his child, in the manner in which he had given it for adoption, he being a sapinda, and in a position to represent other sapindas of the deceased, was an assent by a sapinda to an adoption by a widow sufficient to support her adopting in the absence of an authority from her husband. It was decided that under all the circumstances under which this child had been applied for by the widow and given by the father, the assent of the latter was not one which had rendered the adoption valid as against the brothers. There was no sufficient evidence to show that the widow applied to the boy's father to give his assent as sapinda to an adoption, on the ground that she could not adopt without the sapinda's assent. It was not necessary to determine whether this sapinda could alone have given a valid assent, if it had been given to the widow as one having no authority from her husband to adopt; and if

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Adoption by widow—continued.**

it had been given without his mind having been influenced by other and undue considerations. **GANESA RATNAMAIYAR v. GOPALA RATNAMAIYAR**

[I. L. R., 2 Mad., 270
I. R., 7 I. A., 173]

68. ————— *Authority of husband.*—*Consent of sapinda.*—*V.*, one of the nearest male sapindas of *S.*, gave his son in adoption to the widow of *S.* in 1878. Both the giver and receiver professed to have been carrying out the directions of *S.* In 1883 a suit was brought by *N.*, another sapinda, to set aside this adoption, and it was found that *S.* had not authorised the adoption as alleged by the defendants. *Held* that, under the circumstances, *V.*'s assent to the adoption did not render it valid. **VENKATALAKSHMAMMA v. NARASAYYA**

[I. L. R., 8 Mad., 545]

69. ————— *Authority to adopt.*—*Consent to adopt given by husband's family.*—*Adoption in undivided family.*—*Adoption to a husband separated in estate.*—A Hindu widow, who has not the family estate vested in her and whose husband was not separated at the time of his death, is not competent to adopt a son to her husband without his authority or the consent of his undivided co-parceners. Where the husband of a Hindu widow dies separated, and she herself is the heir, or she and a junior co-widow are the heirs, she may adopt without the sanction of the husband (if he have not, expressly or by implication, indicated his desire that she shall not do so) and without the sanction of his kindred. *N.* and *J.* were two Hindu brothers undivided in estate. *N.* died first, leaving a widow, *K.* *J.* died next, leaving two sons and a widow, *G.* (the defendant). *K.* adopted the plaintiff as son to her husband and herself without the consent either of *J.*'s two sons or his widow, *G.* On the death of *K.* and the two sons of *J.*, the plaintiff sued *G.* (the widow of *J.*) for possession of the family estate. *G.* claimed the estate as heir of her last surviving son, and while admitting the fact of the plaintiff's adoption by *K.*, denied its validity, on the ground that the members of the family had given no assent to the adoption. It was admitted that *K.* had not received from her husband *N.* any permission or direction to adopt a son. *Held* that the plaintiff's adoption by *K.* was invalid, inasmuch as she had not the authority of her husband or the consent of his undivided co-parceners to adopt, nor did she hold any estate in the property. **RAMJI v. GHAMAU**

I. L. R., 6 Bom., 498

70. ————— *Undivided Hindu family.*—*Adoption without the consent of husband or his undivided co-parceners and without the authority of her husband to adopt.*—A Hindu widow, who has not the estate vested in her, is not competent to adopt a son to her husband without his authority or the consent of his co-parceners with whom he was united in estate at the time of his death. *K.* and *V.* were two Hindu brothers. *K.* had a son who died in 1849 in the lifetime of his father, but who was then united in interest with him

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Adoption by widow—continued.**

(*K.*) *K.* died in 1856, leaving him surviving his two nephews, *S.* and *P.* (the sons of his brother *V.*), and his daughter-in-law, *Y.* (the widow of his predeceased son). At the time of his death, *K.* was united in estate with his nephews, *S.* and *P.* In 1871, *Y.* adopted the plaintiff as son to her husband and herself. In 1873 the plaintiff sued *P.* and the sons of *S.* (who died in the meantime) for a share in the family estate. It was found that *Y.* had not the authority either of her husband or of her father-in-law, *K.*, or of any of his co-parceners to adopt. *Held* that the adoption was not valid. *Held* further that a separated kinsman was not qualified to authorise the adoption. **DINKAR SITARAM v. GANESH SHIVRAM**

[I. L. R., 6 Bom., 505]

71. ————— *Adoption without consent of kinsmen.*—*Adoption of a brother's son in pursuance of express authority of husband to adopt.*—*Execution of such authority after a long time since death of husband.*—*Agreement by widow to enjoy property for life.*—*Effect of.*—*Acquiescence.*—*Estoppel.*—*B.* and *E.* were brothers and vatanadar kulkarnis of a village in the Kaldagi District. *B.* died leaving him surviving his widow, the defendant. On the death of *B.*, *E.* endeavoured to appropriate the whole vatan estate so as altogether to exclude the defendant. The defendant appealed to the Revenue authorities, and *E.* admitted her right to a moiety of the vatan. Subsequently in 1856 the defendant passed a document to *E.* to the effect that in consideration of receiving certain property as her share, she would not trouble *E.* in the enjoyment by him of the rest of the vatan, and that she was to hold and enjoy this property for her life. The arrangement continued till 1881. In the meanwhile the defendant adopted her brother's son and made a gift to him of the property held by her under the agreement of 1856. *E.* having died, his son, the plaintiff, brought a suit against the defendant for a declaration that the adoption was invalid as also the gift to the adoptee, and that he was entitled to the property after the death of the defendant. The Court of first instance held that the husband of the defendant and the father of the plaintiff were undivided; that the alleged adoption was not proved; that it was invalid having been made without the consent of the plaintiff, and that after the death of the defendant the property in the possession of the defendant should revert to the plaintiff. On appeal the lower Appellate Court found the fact of adoption proved, but held that the adoption was invalid, and upheld the decree of the Court of first instance as to the right of the plaintiff as reversioner to the property in the possession of defendant. On appeal to the High Court,—*Held* (reversing the decrees of the lower Courts) that the document passed by the defendant to the father of the plaintiff implied a previous separation between the husband of the defendant and the father of the plaintiff. The expression that she was to hold and enjoy for life merely described the ordinary estate of a Hindu widow and did not impose any restriction on the exercise of her powers. As a widow of a Hindu separated from his brother in

HINDU LAW—ADOPTION—continued.**2. WHO MAY ADOPT—continued.****Adoption by widow—continued.**

worship and estate she could adopt a son, which right even if she could forego she did not by the document which was a family settlement and recognised the right of defendant as that of a widow of a separated brother. The fact of separation having thus become distinct and having been acted on for about twenty-eight years, the plaintiff was not at liberty to impeach it. *Held* also that as the widow of *B.* separated in interest from *B.*, the defendant was at liberty to adopt a son without the previous sanction of *B.* or the plaintiff. The fact that the adoptee was son of the brother of the defendant did not render the adoptee unfit for adoption, as it was a case from the Southern Maratha country. *Held* further, that though so long a period as twenty-five years had been allowed to pass between the date of the death of her husband and that of adoption, that circumstance did not in any way extinguish the right of the defendant to adopt under circumstances calling for adoption. *GRIOWA v. BHIMAJI* . . . **I L. R., 9 Bom., 58**

72. ——— Inheritance.—
Sonless widow.—Usage of Jains.—Right of widow to adopt.—Status of widow who has adopted.—On the evidence given in this case, *Held* that, according to the usage prevailing in Delhi and other towns in the North-Western Provinces, among the sect of the Jains known as Saraogi Agarwalas, a sonless widow takes an absolute interest in the self-acquired property of her husband; has a right to adopt without permission from her husband or consent of his kinsmen; and may adopt a daughter's son, who, on the adoption, takes the place of a son begotten. *Quare*,—Whether on such an adoption the widow is entitled to retain possession of the estate either as proprietor, or as manager of her adopted son. *SHRO SINGH RAI v. DAKHO* [**I L. R., 1 All., 688**

Affirming decree of High Court in *SHRO SINGH RAI v. DAKHO* . . . **6 N. W., 382**

3. WHO MAY BE ADOPTED.

73. ——— Adoption not in accordance with will.—Adoption without consent of trustees.—Invalid adoption.—A Hindu by will bequeathed his estate to a son to be adopted in a certain event by *A.* with the consent of *B.* or *B.'s* representatives, with a gift over on failure of adoption with such consent to *B.* or *B.'s* representatives. On the happening of the event after *B.'s* death, *A.* adopted the plaintiff without the consent of *B.'s* representatives who withheld their consent after a demand by *A.* *Held* that this was not such an adoption as would entitle the plaintiff to take under the will, and that consequently the gift over took effect. *BHEMOHTEN SHIN v. HEEBALAL SEAL* . . . **2 Ind. Jur., N. S., 225**

74. ——— Consanguinity.—Adoption of son of person with whom adopter could not intermarry.—Invalid adoption.—Semble.—The adoption of the son of a person with whom the adopter could not have intermarried is invalid according to Hindu law. *JAYANI BHAI v. JIVA BHAI* . . . **2 Mad., 462**

HINDU LAW—ADOPTION—continued.**8. WHO MAY BE ADOPTED—continued.****Consanguinity—continued.**

75. ——— Adoption of son of person with whom adopter could not intermarry.—Relationship prior to marriage.—The rule of Hindu law that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage. *SEIRAMALU v. RAMAYYA*

[**I L. R., 3 Mad., 15**

76. ——— Adoption of son of person with whom adopter could not intermarry.—Sudras.—The rule prohibiting the adoption of one with whose mother, in her maiden state, the adopter could not have legally intermarried, is not binding on Sudras. *CHINNA NAGAYYA v. PEDDA NAGAYYA* [I L. R., 1 Mad., 62****

77. ——— Validity of adoption.—Superior castes.—Consanguinity does not invalidate an adoption where the parties involved do not belong to any of the three regenerated castes. *PER MITTER, J. NUNKOO SINGH v. PURM DRUM SINGH* . . . **12 W. R., 356**

78. ——— Son adopted after payment of price.—Contract to give son in consideration of an annual allowance.—Contract Act (IX of 1872), s. 23.—An adoption of a son after payment of price is not recognised in the present, the Kali, Yuga. The only adoption now recognised is that of the dattaka son, or son given. A contract to give a son in adoption, in consideration of an annual allowance to the natural parents, is void under section 23 of Act IX of 1872, inasmuch as the contract, if carried out, would involve an injury to the person and property of the adopted son, and would defeat the provisions of the Hindu law. *ISHAN KISHOR ACHARYEN CHOWDERY v. HARIS CHANDRA CHOWDERY* [13 B. L. R., Ap., 42: 21 W. R., 361****

79. ——— Adult Brahman.—Performance of upanayana.—Validity of adoption.—Quare.—Whether a Brahman adult, whose upanayana and marriage ceremonies have already been performed in the family of his natural father, can be adopted into another family according to Hindu law. *SADASHIB MOORESHVAR GHATE v. HARI MOORESHVAR GHATE* . . . **11 Bom., 190**

80. ——— Adoption of person on whom upanayana has been performed.—The weight of authority is against the validity of the adoption of one upon whom the upanayana has been already performed. In strictness, there is no authority upon the other side. *VENKATESAIA v. VENKATACHARLU*

[**3 Mad., 28**

81. ——— Brahmins.—Validity of adoption.—Among Brahmins the adoption of a son for whom the chudakarana and upanayana ceremonies have been performed in his natural family is not on that ground invalid. He notwithstanding acquires the legal status of an adopted son, the fact of those ceremonies having been already per-

HINDU LAW—ADOPTION—continued.**3. WHO MAY BE ADOPTED—continued.**

Adoption of person on whom upanayana has been performed—continued.

formed only rendering necessary, in a religious point of view, their re-performance and the performance of certain additional ceremonies in the adoptive family, the latter being considered to have the effect of annulling those performed in the boy's natural family. **LAKSHMAPPA v. RAMAYA** . 12 Bom., 364

82. ——— Brahmins. —

Custom.—Validity of adoption.—According to the custom obtaining amongst Brahmins in Southern India, the adoption of a boy of the same gotra, after the upanayana ceremony has been performed, is valid. **Venkatesaya v. Venkatachari**, 8 Mad., 28, overruled. **VIRARAGAVA v. RAMALINGA**

[I. L. R., 9 Mad., 148]

83. ——— Adoption of a married asagotra Brahman.—Validity of adoption.—Factum valet.—The adoption of a married asagotra Brahman is not prohibited by the Hindu law in force in the Presidency of Bombay. The circumstance that there was a person better qualified than the adoptee would not by itself render such adoption invalid, or prevent the principle of *factum valet* from applying. Where a rule is in effect *directory* only, an adoption contrary to it, however blameable, is nevertheless, to every legal purpose, good. **DHARMA DAGU v. RAMKRISHNA CHIMNAJI** . I. L. R., 10 Bom., 80

84. ——— Adoption of Sudra after marriage.—Validity of adoption.—Quare.—Whether a Sudra can be validly adopted after marriage. **VYTHILINGA MUPPANA v. VIJAYATHAMMAL**

[I. L. R., 6 Mad., 43]

85. ——— Law in Western India.—Validity of adoption.—According to the Hindu law obtaining in Western India, the adoption of a Sudra who is married at the time of his adoption is not invalid if the adopted person be a sagotra (of the same family) of the person adopting. **NATHAJI KRISHNAJI v. HARI JAGOJI** . 8 Bom., A. C., 67

86. ——— Law in Western India.—Validity of adoption.—In Western India an adoption among Sudras is not invalid, although the person adopted was married before his adoption, nor although he may be a son of the adopter's sister, and, therefore, not a sagotra (*i.e.*, of the same family) with the adopter. Even among Brahmins marriage does not disqualify for adoption. **Quare.**—Whether the adoption of an asagotra married man belonging to any of the three regenerate classes would be invalid. **LAKSHMAPPA v. RAMAYA** . 12 Bom., 364

87. ——— Adoption of self-given adult son.—Law in Bombay Presidency.—Invalidity of adoption.—Amongst Hindus in the Presidency of Bombay, an adoption of a son self-given although he may at the time of the gift be an adult, is in the present age (the Kali Yuga) invalid. **BASHEETAPPA BIN BASLINGAPPA v. SHIVLINGAPPA BIN BALLAPPA** . 10 Bom., 268

HINDU LAW—ADOPTION—continued.**3. WHO MAY BE ADOPTED—continued.**

88. ——— Brother's son.—Invalid adoption.—A woman may not affiliate by adoption a brother's son. **BATTAS KUAR v. LACHMAN SINGH** [7 N. W., 117]

89. ——— Daughter's son.—Doctrine of factum valet.—Invalid adoption.—Amongst Brahmins the adoption of a daughter's son is incestuous and invalid, and cannot be supported on the authority of the maxim *factum valet quod fieri non debuit*. **BRAGIRTHEIBAI v. RADHABAI**

[I. L. R., 3 Bom., 296]

In Southern India it seems to be a valid adoption. **VAYIDIADA v. ARPU** . I. L. R., 9 Mad., 44

90. ——— Daughter's or sister's son.—Invalid adoption.—Lingayats.—Factum valet, Doctrine of.—It is a general rule and fundamental principle amongst Brahmins, Kshatriyas, and Vaishyas, that they are absolutely prohibited from, and incapable of, adopting a daughter's or sister's son or son of any other woman whom they could not marry by reason of propinquity. The burden of proving a special custom to the contrary amongst any members of these three regenerate classes, prevalent either in their caste or in a particular locality, lies upon him who avers the existence of that custom. Limits within which the maxim *quod fieri non debuit factum valet* applies, pointed out. Lingayats are members of the Sudra, and not of the Vaishya class. **GOPAL NARHAR SAFRAY v. HANMANT GANESH SAFRAY** . I. L. R., 3 Bom., 273

91. ——— Eldest son.—Validity of adoption.—The adoption of an eldest son is, under the precedents of the Sudder Court, although improper, not illegal. **SHEETARAM v. DRUNNOOK DHARSH SANYE** . 1 Hay, 260

92. ——— Validity of adoption.—In a suit by a Hindu widow to recover possession of certain property dedicated to idols, as heir to her deceased husband, the last shebait, it appeared that the plaintiff's husband was an adopted son of his predecessor in office, and that he was the eldest son of the first defendant who was the nearest male cognate of the adoptive father. On behalf of the defendant it was contended, that the adoption of an eldest son was invalid, and that consequently plaintiff's husband did not succeed rightfully to the shebaitship. **Held** that the adoption of an eldest son, where there are several sons, was not invalid by Hindu law. **JANOKER DEBEA v. GOPAUL ACHARYA** . I. L. R., 2 Cal., 365

93. ——— Validity of adoption.—The prohibition to the adoption of an eldest son—unlike that to the adoption of an only son—is admonitory merely, and does not create any legal restriction. Texts from original Smriti writers, with the opinions of their commentators and the decisions of the High Courts, bearing on the subject, referred to and discussed. **KASHIBAI v. TATIA** [I. L. R., 7 Bom., 221]

HINDU LAW—ADOPTION—continued.**3. WHO MAY BE ADOPTED—continued.****Eldest son—continued.**

94. ————— *Validity of adoption.*—Adoption of the eldest son upheld. **JAMNABAI v. RAYCHAND NAHALCHAND**

[I. L. R., 7 Bom., 225

As to the adoption of an eldest son, See also **NILMADHUB DAS v. BISWAMBHAR DAS**

[3 B. L. R., P. C., 27: 12 W. R., P. C., 29
13 Moore's I. A., 85

and **LAKSHMAPPA v. RAMAYA** . 12 Bom., 364

95. ————— *Grandnephew.*—*Reflection of a son.*—*Appointment.*—A grandnephew may be validly adopted under Hindu law. **MORUN MPEE DEBEA v. BEJOY KISHTO GOSSAMEE, W. E., F. B., 121**, followed. **HARAN CHUNDER BANERJI v. HURRO MORUN CHUCKERBUTTY** . . . I. L. R., 6 Cal., 41
[6 C. L. R., 393

96. ————— *Validity of adoption.*—The adoption of a grandnephew is not repugnant to Hindu law. An adopted son cannot succeed to his adoptive maternal grandfather's estate when there are collateral male heirs. **MORUN MOYEE DABBA v. BEEJOY KISHEN GOSSAMEE**

[W. R., F. B., 121

97. ————— *Half-brother.*—*Invalid adoption.*—The prohibition of the adoption of a half-brother has nothing to do with the possibility of a legal marriage between the son and his stepmother in her virgin state. **SRI RAMULU v. RAMAYYA**

[I. L. R., 3 Mad., 15

98. ————— *Maternal aunt's daughter's son.*—*Validity of adoption.*—Neither by local usage nor by the law of Mitakshara is the adoption of the son of a maternal aunt's daughter invalid. **VENKATTA v. SUBHADRA** . . . I. L. R., 7 Mad., 548

99. ————— *Mother's sister's son.*—*Validity of adoption.*—*Sudras.*—Adoption of the mother's sister's son is valid among Sudras. **CHINNA NAGAYYA v. PEDDA NAGAYYA**

[I. L. R., 1 Mad., 62

100. ————— *Only son.*—*Validity of adoption.*—The adoption of an only son is, when made, valid according to Hindu law. **CHINNA GAUNDAN v. KUMARA GAUNDAN** . . . 1 Mad., 54

SHINAM GOUNDEN v. COOMARA GOUNDEN

[1 Ind. Jur., O. S., 115

101. ————— *Validity of adoption.*—The adoption of an only son is invalid according to Hindu law. **OPENDRO LAL ROY v. PRASANNAMAYI** . . . 1 B. L. R., A. C., 221

S. C. OPENDRA LAL ROY v. BROMO MOYEE

[10 W. R., 347

102. ————— *Adoption by Sudra.*—*Validity of adoption.*—The adoption by a Sudra of an only son as a karta putro is not illegal under Hindu law. **TIKDEY v. LALLA HUREELALL**

[W. R., 1864, 133

HINDU LAW—ADOPTION—continued.**3. WHO MAY BE ADOPTED—continued.****Only son—continued.**

103. ————— *Validity of adoption.*—*Factum valet, Doctrine of.*—*Held* (TURNER, J., dissenting) that the adoption of an only son cannot, according to Hindu law, be invalidated after it has once taken place. **HANUMAN TIWARI v. CHIRAI** . . . I. L. R., 2 All., 164

104. ————— *Construction of deed of gift.*—*Adoption of eldest or only son.*—A Hindu died after having made a hibbanama, or deed of gift, giving the bulk of his property to the eldest son of one of his brothers, designating him as his pallok-putra. The donee thereof died without issue, but leaving a widow him surviving. On the death of his widow his cousins sued his step-brother for possession of their share of his property, on the allegation that he had been adopted by their uncle, and consequently the relationship between him and his step-brother had been severed, and that they were equally entitled with the step-brother to succeed. The defendant denied the fact of the adoption. The High Court held that the intention to adopt and the fact of adoption were proved by the terms of the deed of gift. *Held*, by the Privy Council, reversing the judgment of the High Court, that the words of the hibbanama ["but as I had no son or daughter, I took you as my pallok-putra in the month of Aghran 1211 B.S. (1803), with the anumati (permission) of your parents, for the purpose of securing future oblations of water and funeral cake, and having brought you up like a son, performed the ceremonies of your sangsar, &c., and have constituted you my representative"], were not those which properly import the adoption of a son by gift—dattak putra. *Held* that the presumption which arose from the religious duty of a childless Hindu to adopt was, in this case, opposed to as strong a presumption that a Hindu would not break the law by giving in adoption an eldest or only son. **NILMADHUB DAS v. BISWAMBHAR DAS**

[3 B. L. R., P. C., 25: 12 W. R., P. C., 29
13 Moore's I. A., 85

105. ————— *Sudras.*—*Validity of adoption.*—The adoption of an only son is invalid according to the Bengal school of Hindu law, and the prohibition applies as well to Sudras as to the higher castes. **MANICK CHUNDER DUTT v. BHUGGOBUTTY DOSSRE** . . . I. L. R., 3 Cal., 443

106. ————— *Age of adopted son.*—*Validity of adoption.*—*Held* that the adoption by a Hindu widow of an only son, if valid in every other respect, cannot be set aside by reason of the adopted being an only son of an advanced age. **VIANKATRAY ANANDRAY NIMBALKAR v. JAYATANTRAY BIN MALHARAY RAMADIYE**

[4 Bom., A. C., 191

107. ————— *Married son.*—*Sudras.*—*Validity of adoption.*—An adoption amongst Sudras is not necessarily invalid because the person adopted is an only son and is married, and has been given in adoption by his mother after her hus-

HINDU LAW—ADOPTION—continued.**3. WHO MAY BE ADOPTED—continued.****Only son—continued.**

band's death and without his authority. **MHALSABAI v. VITHORA KHANDAPPA GULVE**

[7 Bom., Ap., 26]

108. ————— Validity of adoption.—*Authority of husband, Absence of.*—A gift by a Hindu widow of her deceased husband's only son is invalid in the absence of an express authority conferred upon her by him during his lifetime. Such an adoption, being null and void *ab initio*, cannot be supported by the maxim *quod fieri non debuit factum valet*.—*Quære*.—Whether a gift in adoption of an only son by his father is void in the Presidency of Bombay.

109. ————— Absence of authority of husband.—*Validity of adoption.*—In the Presidency of Bombay a widow may give in adoption a younger son where her husband has not, by direct prohibition or otherwise, indicated his unwillingness that she should, after his death, give such younger in adoption, the husband's assent to such a gift being implied. But it cannot be implied to the gift, by his widow after his death, of an eldest, and still less of an only, son in adoption, where he did not expressly indicate such assent in his lifetime. *Semble*.—Where a father gives his only son in adoption as a *dwyamush yavana*, he consents to deprive himself of one-half of the spiritual benefit derivable from the performance of religious obsequies. Hence his consent cannot be implied even to such a gift when made by his widow after his death. To such a case the *factum valet* principle is wholly inapplicable, because the adoption would be, as regards her, not *quod fieri non debuit*, but *quod fieri non potuit*. The maxim *quod fieri non debuit factum valet* considered, and its application pointed out. There is no authority for drawing any distinction between Sudras and the other classes on the question of the legality of the adoption of an eldest or an only son. *Mhalsabai v. Vithora*, 7 Bom., Ap., 26, dissented from so far as it supported the gift in adoption, by a widow, of an only son without the authority of her husband. **LAKSHMAPPA v. RAMAYA**

[12 Bom., 364]

110. ————— Lingayats.—*Gift in adoption by widow without an express authority from her husband.*—The plaintiff, a Sudra of the Lingayat caste, sued for possession of certain property, alleging that he had been adopted by the defendant, a widow of the same caste. The defendant denied the adoption, and contended that it was invalid, inasmuch as he was an only son, and had been given in adoption by his widowed mother without an express authority from her husband. The plaintiff, in support of his adoption, produced two documents executed by the defendant, *viz.*, a deed of adoption and a compromise, in which the defendant had ratified the plaintiff's adoption. It was found that the defendant was very young, and did not act independently in the execution of those documents. *Held* that the adoption was invalid on two grounds, *viz.*, 1st, that the mother had no authority to give

HINDU LAW—ADOPTION—continued.**3. WHO MAY BE ADOPTED—continued.****Only son—continued.**

the plaintiff in adoption, because he was the only son of her deceased husband at the time of the adoption; and 2ndly, that the defendant (whether an infant or not) was not, either at the time of the alleged adoption or at that of the alleged ratification of it, a free agent, but was subject to undue influence. In the case of an only son the High Court refuses to imply authority in the mother to give such a son in adoption. *Quære*.—Whether the plaintiff was incapable of being adopted by the defendant, because his mother was a second cousin of the defendant's husband. *Bayabai v. Bala Venkatesh*, 7 Bom., Ap., 1; *Gopal Narhar v. Hamant Ganesh*, I. L. R., 8 Bom., 273, referred to. *Lakshmappa v. Ramaya*, 12 Bom., 364, approved. **SOMASHEKHARA v. SUBHADRAMAJI** . . . I. L. R., 6 Bom., 524

111. ————— Orphan.—*Invalid adoption.*—According to Hindu law an orphan cannot be adopted. **SUBBALUVANKAL v. ANNAKUTTI ANKAL**
[2 Mad., 129]

112. ————— Law of Western India.—*Invalid adoption.*—According to the Hindu law prevailing in Western India, an orphan cannot be adopted. **BALVANTRAY BHAKSAR v. BAYABAI**
[6 Bom., O. C., 83]

113. ————— Paluk-putro.—*Invalid adoption.*—The Hindu law does not allow of the adoption of a paluk-putro. **KALEN CHUNDER CHOWDHURY v. SHIB CHUNDER** . . . 2 W. R., 261

This decision was not disputed in the Privy Council on this point.

See **KALI CHANDRA CHOWDHURY v. SHIB CHUNDER BHADURI**
[6 B. L. R., 501; 15 W. R., P. C., 12]

114. ————— Putrika-putra.—*Invalid adoption.*—The adoption of a "putrika-putra" is invalid. **NURSING NARAIN v. BRUTTON LALL**
[W. R., 1864, 194]

115. ————— Sister's son.—*Andhra country.*—*Invalid adoption.*—In the Andhra country, as in Bengal, a Brahman cannot adopt his sister's son. **NARASAMAL v. BALARAMACHARLU** . 1 Mad., 420

116. ————— Validity of adoption.—It is now well settled law that the adoption of a sister's son by a Hindu of the Vaishya caste is valid. **GANPATRAY VIRISHVAR v. VITHORA KHANDAPPA** . . . 4 Bom., A. C., 130

117. ————— Validity of adoption.—*Custom.—**Acquiescence in fact of adoption.*—Suit to set aside the adoption of the first defendant, the alleged adopted son of plaintiff's undivided brother, to declare plaintiff's title to certain lands, and for possession. First defendant pleaded that the question of his adoption was *res judicata*, and the Civil Judge so decided. Upon appeal, the High Court reversed the decision and remanded the case for decision on the merits. After trial the Civil

HINDU LAW—ADOPTION—continued.**3. WHO MAY BE ADOPTED—continued.****Only son—continued.**

Judge found that the fact of the adoption was satisfactorily proved, and that first defendant had done acts as adopted son since 1833 at least. It was also argued, on plaintiff's part, that the adoption was illegal, being that of a sister's son, and the judgment of *HOLLOWAY, J.*, in *Narasama v. Balaramachariu*, 1 Mad., 420, was cited. The Civil Judge decided that this applied only to the Andhra country, and that as the custom was common in the Dravida country the adoption was legal, or if not legal that it was too late to dispute it. The plaintiff appealed and the case was referred to a full Court. The Court decided that on the general principles of Hindu law, as expounded by the writers of all schools, a Brahman could not legally adopt his sister's son, but as the existence of a custom, derogating from the general law, was asserted, they directed an enquiry into the existence of the supposed custom. The Civil Judge found that a rule of customary law did exist affirming the legality of the adoption of a sister's son by a Brahman. Upon the question coming before the High Court the finding of the Civil Judge as to the existence of the custom was reversed and the following issue sent for determination:—"Has the conduct of the plaintiff and that of the members of his family been such as to render it inequitable for him to set up as against the present defendant the rule of law upon which he now insists?" The Judge found to the effect that there had been a long course of acquiescence by all the members of the family, the plaintiff included, in the validity of sonship asserted. *Held* that this would be hardly enough if, through the influence of that course of representation by conduct the defendant had not altered his situation so that it would be impossible to restore him to that original situation; that he had done so; and that, although the adoption was invalid and inadequate of itself to create communion, that communion had been created by the course of conduct of the plaintiff and his family, coupled with the defendant's changed situation which had resulted. *GOPALAYYAN v. RAGHUPATIAYYAN alias AYYAVAYYAN* . 7 Mad., 250

118. ———— *Suit for partition of property by person in possession making a false claim thereto.*—According to the Hindu law, a Brahman cannot validly adopt his sister's son. *B.*, a childless Hindu and a Brahman, adopted *X.*, his sister's son, and subsequently apprehending that the adoption was invalid, executed a will by which he left his estate to *X.* After *B.*'s death, *X.* obtained possession, and remained in possession of the estate till his death, which occurred before he had attained majority. After this, joint possession of the estate was obtained by *P.* and *S.*, two widows of *B.*, who set up a right of inheritance from *X.*, as being in the position of mothers to him, in consequence of his adoption by their deceased husband. A suit was brought by *S.* against *P.* for partition of the estate. *Held* that the adoption of *X.* by *B.*, a Brahman, was invalid, and that *P.* and *S.* were not entitled to succeed him as his heirs. *PARBATI v. SUNDAR* [I. L. R., 8 All., 1

HINDU LAW—ADOPTION—continued.**8. WHO MAY BE ADOPTED—continued.****Only son—continued.**

119. ———— *Custom.—Brahmans.—Daughter's son.*—In Southern India the custom which exists among Brahmans of adopting a sister's or daughter's son is valid. *VAYINDINADA v. AFFU* . . . I. L. R., 9 Mad., 44

120. ———— *Jain law.—Validity of adoption.*—The question of the validity of an adoption, the parties between whom the question arose being Jains, was decided in accordance with the law of that sect, and not in accordance with Hindu law. Under Jain law the adoption of a sister's son is valid. *HASSAN ALI v. NAGA MAL* [I. L. R., 1 All., 288

121. ———— *Mitakshara law.—Kayasthas.—Sudras.*—As a general principle Kayasthas are Hindus of the Sudra class, and may, as such, adopt their sister's son. *RAJ COOMAR LALL v. BISSESSUR DYAL* . I. L. R., 10 Calc., 688

122. ———— *Stranger.—Adoption of stranger where there is a brother's son.—Validity of adoption.*—By the Hindu law, the adoption of a stranger is valid, notwithstanding the existence of a brother's son at the time of the adoption. *GOCOLANUND DOSS v. WOOMA DARE* [15 B. L. R., 405; 23 W. B., 340

In the same case on appeal before the Privy Council, it was laid down that passages in the *Dattaka Mimansa* and the *Dattaka Chandrika*, which prescribe that a Hindu wishing to adopt a son shall adopt the son of his brother, if such a person be in existence and capable of adoption, in preference to any other person, although binding upon the conscience of pious Hindus as defining their duty, are not so imperative as to have the force of laws, the violation of which should be held in a Court of Justice to invalidate an adoption which has otherwise been regularly made. *WOOMA DARE v. GOCOLANUND DASS* [I. L. R., 3 Calc., 587; 2 C. L. R., 51 I. R., 5 I. A., 40

123. ———— *Wife's brother's son.—Validity of adoption.*—The son of a wife's brother may be adopted. *SEIRAMULU v. RAMAYYA* [I. L. R., 3 Mad., 15

4. SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS.

124. ———— *Second adoption.—Adoption while first adopted son is living.*—A second adoption cannot take place in the lifetime of the first adopted son. *GOPES LALL v. CHANDRALES BUHOJEE* . 11 B. L. R., 391; 19 W. R., 12 [I. L. R., 1 A., Sup. Vol., 131

Affirming the decision of the High Court in *CHOUNDAWALEE BAHOOJEE v. GIRDHAREJEE* [3 Agra, 226

HINDU LAW—ADOPTION—continued.**4. SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS—continued.****Second adoption—continued.**

125. ———— Such an adoption is inoperative if made. *SUDANAND MOHAPATUR v. BONOMALLEE*. *Marsh.*, 317: 2 *Hay*, 205

126. ———— *Adoption while first adopted son is living.*—According to Hindu law the adoption of a second son is invalid while the first adopted son exists and retains his character of a son. *LAKSHMAPPA v. RAMA*. 12 *Bom.*, 364

127. ———— *Acquiescence of first adopted son in division of property.*—According to Hindu law, a second adoption (the first adopted son still existing and remaining in possession of his character of a son) is invalid. The acquiescence of the first adopted son, after he came of age, in the division of property made by the adopting father between his two adopted sons, was not equivalent to a previous consent (binding on the first adopted son) to the disposition of the ancestral property by the father, but was binding on the first adopted son with regard to other property of which the father had the power of disposing by an act *inter vivos* without the consent of the first adopted son. *RUNGAMA v. ATORAMA*. *ATORAMA v. RAMANADHA BABOO*

[7 *W. R.*, P. O., 57: 4 *Moore's I. A.*, 1

128. ———— *Jain law.*—

Validity of adoption.—In a suit to which the parties were Jains, and in which the plaintiff claimed a declaration that he was adopted by the defendant to her deceased husband, and that as such adopted son he was entitled to all the property left by her deceased husband, it was found that subsequent to the husband's death, the defendant had adopted another person, who had died prior to the adoption of the plaintiff, and without leaving widow or child. *Held* that the powers of a Jain widow, except that she can make an adoption without the permission of her husband or the consent of his heirs, and may adopt a daughter's son, and that no ceremonies are necessary, are controlled by the Hindu law of adoption, and the *Kritima* form of adoption not being recognised by the Jain community, or among the Hindus of the North-Western Provinces, it must be assumed that the widow had power to make a second adoption and that such adoption was to her husband. *Held* therefore that the adoption of the plaintiff was valid and effective. *Held* also, that the effect of the second adoption being to make the second adopted son the son of the deceased husband, he must be treated as if he had been born, or at all events conceived, in the husband's lifetime, and his title related back to the death of the elder brother, the first adopted son, so that if the elder brother left no widow or child who would succeed him to the exclusion of his younger brother, the second adopted son would succeed as heir to the father. *Shao Singh Rai v. Dakho*, 1 *L. R.*, 1 *All.*, 688, referred to. *LAKHMI CHAND v. GATTO BAI*

[1 *L. R.*, 8 *All.*, 319

129. ———— *Simultaneous adoption.*—*Invalid adoption.*—A simultaneous adoption is not

HINDU LAW—ADOPTION—continued.**4. SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS—continued.****Simultaneous adoption—continued.**

valid according to Hindu law. The adoption of one son alone is actually and in itself wholly sufficient to satisfy the purpose of the law; the adoption of two is not within the scope of the power of adoption, and where such a thing is attempted, neither of the children is the legally adopted son of the deceased, although the ceremonies of adoption may have been performed as regards each, and also at the same time. *GYANENDRO CHUNDER LAHIRI v. KALAPAHAR HAJI* [1 *L. R.*, 9 *Cal.*, 50: 11 *C. L. R.*, 297

In the same case in the Privy Council the case was thus stated and decided. Two widows of a Hindu each adopted a son to their deceased husband, under an authority from him, thus expressed: "You.....the elder widow, may adopt three sons successively, and you.....the younger widow may adopt three sons successively." *Held* that this might more reasonably be construed as giving the elder widow authority to adopt three sons successively, and then a similar power to the younger, than as authorising simultaneous adoptions. *Held* also that, supposing that the husband had intended to give such an authority, the law did not allow two simultaneous adoptions. The opinion of *W. H. Macnaghten* on the subject referred to and approved. *AKHOY CHUNDER BAGCHI v. KALAPAHAR HAJI*

[1 *L. R.*, 12 *Cal.*, 406: 12 *L. A.*, 198

MONEMOTHEENATH DEY v. ONAETH NAUTH DEY [2 *Ind. Jur.*, N. S., 24

S. C. in Court below. *Bourke*, O. C., 189

SIDDESSORY DASSEE v. DOORGAOHURN SETT [2 *Ind. Jur.*, N. S., 23: *Bourke*, O. C., 360

DOSSEMONY DOSSEE v. PROSONOMOYEE DOSSEE [2 *Ind. Jur.*, N. S., 18

where the question was only raised however, and it was assumed such an adoption would be invalid without deciding it.

See also CHOUNDAWALEE BAHOOJEE v. GIRDHAREEJEE. 3 *Agra*, 226

Affirmed by the Privy Council in *GOOPER LALL v. CHANDRAOOLEE BAHOOJEE*. 11 *B. L. R.*, 391 [19 *W. R.*, 12: 1 *L. R.*, 1 *A.*, Sup. Vol., 131

130. ———— *Invalidity of gift made to a person as being the adopted son of donor, where the adoption fails.—Persona designata.*—A testator gave by will to each of his two wives a power to adopt, and gave his property to his sons so to be adopted, but did not provide, nor did he know who the adopted sons were to be. The adoption which subsequently took place was found to have been a simultaneous adoption by the two widows: *Held*, that such an adoption was invalid, and that the persons purporting to be the adopted sons did not answer the description in the will of adopted sons, and that therefore there was not such a sufficient designation of their persons as to enable them to take under the will. *Monemthonath Dey v. Onathnath Dey*, 2 *Ind. Jur.*, N. S., 24, distinguished, and *Fa-*

HINDU LAW—ADOPTION—continued.**4. SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS—continued.****Simultaneous adoption—continued.**

Indira Deb Raikat v. Rajeswar Das, I. L. R., 11 Calc., 463; L. R., 13 I. A., 72, followed on the question of *persona designata*. DOORGA SUNDARI DOSSEE v. SURENDRA KESHAY RAI

[I. L. R., 12 Calc., 686]

131. — Conditional adoption.—

Position of father giving son in adoption.—Where a Hindu widow, in whom had vested by inheritance the whole of her husband's property, moveable and immoveable, agreed to accept a boy in adoption on an express agreement by his father that during her lifetime she should be entitled to such property, subject, however, to the boy's maintenance and education, and upon the faith of such agreement adopted the boy, it appearing that she would not have done so at all if it had not been for such agreement,—*Held* that the agreement was binding upon the adopted son, and that the son's proprietary right was subject to the interest thereby created in favour of his adoptive mother. *Held* also that, under the Hindu law, the power exercised by a father in giving his son in adoption is not only co-extensive with the power of a guardian, but is more like the power of an absolute proprietor. CHITKO RAGHUNATH RAJA-DIKSH v. JANAKI . . . 11 Bom., 199

132. — Consent given to

adoption on conditions.—*Effect of non-fulfilment of conditions.*—Where the natural father of the son given in adoption wrote to the adoptive mother, a widow, giving his consent to the adoption on certain conditions,—*Held* that a non-fulfilment of one of the conditions rendered the adoption invalid, notwithstanding that the condition was unnecessary, and imposed in consequence of a mistake as to the necessity for the assent of Government to the adoption. RANGUBAI v. BHAGIRATHIBAI

[I. L. R., 2 Bom., 377]

133. — Agreement by

natural father restricting son's interest in the inheritance of his adoptive father.—The natural father of a boy whom the widow of a deceased Hindu proposed to adopt as a son to her husband entered into a written agreement with her to the effect that the boy should inherit only a third of the property of his adoptive father: *Held* that the agreement was not void, but was at least capable of ratification when the adopted son became of age. RAMASAMI AYYAN v. VENKATARAMAIYAN . . . I. L. R., 2 Mad., 91

[I. L. R., 6 I. A., 196]

134. — Minor adopted

on conditions.—*Semble.*—A minor taken in adoption is not bound by the assent of his natural father to terms imposed as a condition for the adoption. LAKSHMANNA RAU v. LAKSHMI AMMAL

[I. L. R., 4 Mad., 160]

5. EFFECT OF ADOPTION.

135. — Retrospective effect.—An adoption by a widow has a retrospective effect,

HINDU LAW—ADOPTION—continued.**5. EFFECT OF ADOPTION—continued.****Retrospective effect—continued.**

and, relating back to the death of the deceased husband, entitles the adopted son to succeed to his estate. VYANKATRAY ANANDEAV v. JAYAVANTRAY BIN MALHARAY RANADIVE . 4 Bom., A. C., 191

136. — Power of adopted

son to set aside gift made before his adoption.—The adoption of a son by a Hindu widow has a retrospective effect; a son therefore adopted to her husband by a widow is entitled to set aside a gift of ancestral immoveable property made by his adoptive father's widow previous to his adoption. NATHAJI KRISHNAJI v. HARI JAGOJI . . . 8 Bom., A. C., 67

137. — Date from which

title of son takes effect.—The title of a son adopted by a widow under authority from her husband does not relate back to the death of the husband. LAKSHMANNA RAU v. LAKSHMI AMMAL

[I. L. R., 4 Mad., 160]

138. — Illatam custom.—Status of

son-in-law.—Coparcenary.—Survivorship.—Proof of special custom.—Although an illatam son-in-law and a son adopted into the same family may live in commensality, neither they nor their descendants can, in the absence of proof of custom, be treated as Hindu coparceners having the right of survivorship. CHENCHAMMA v. SUBBAYA . . . I. L. R., 9 Mad., 114

139. — Status of adopted son.—

Theory of adoption.—The theory of an adoption is a complete change of paternity; the son is to be considered as one actually begotten by the adoptive father, and he is so in all respects save an incapacity to contract marriages in the family from which he was taken. NARASAMAL v. BARAMACHARLU

[1 Mad., 420]

140. — Rights in his

natural family.—Inheritance.—The severance between an adopted son and his natural family is so complete that no mutual rights as to succession to property can arise between them. SRINIVASA AYYANGAR v. KUPPAN AYYANGAR. ROYAN KRISHNAMACHARIYAR v. KUPPAN AYYANGAR . 1 Mad., 180

141. — Inheritance in

adopted family.—Adoption is tantamount to the birth of a son to the adopter, and the property inherited from the adopter must be regarded as ancestral; during the lifetime of his father a son cannot claim to have a specific share declared and defined, but is only entitled to a decree declaring the property to be ancestral. HEERA SINGH v. BURZAR SINGH

[1 Agra, 256]

142. — Consent to subse-

quent adoption.—Liability to deprivation of inheritance by will.—Where a Hindu has adopted a son, he acquires the right of a son in the hereditary immoveable property of the adoptive father; and he cannot be deprived of these rights by the adoptive father afterwards assuming to adopt a second son,

HINDU LAW—ADOPTION—continued.**5. EFFECT OF ADOPTION—continued.****Status of adopted son—continued.**

and settling the hereditary property upon such second adopted son, coupled with declarations that the first son was disinherited. According to Hindu law, an adoption of a second son during the lifetime of a previously adopted son is inoperative. A childless Hindu adopted A. as his son; afterwards he adopted B. as his son and made a will, dividing his property, ancestral as well as acquired, between A. and B. A. filed a petition denying the right of his adoptive father to adopt B., and protesting against the will; but afterwards he signed a consent to the will. *Held* that as the father afterwards endeavoured to deprive A. of all his rights, as well those under the will as by the adoption, the consent did not bind A., since it was given on the basis of a family arrangement, from which the adoptive father afterwards departed. *Semble*,—That if the consent were given by A. in ignorance of his right it would not be binding upon him. **SUDANUND MOHAPUTTUR v. BONOMALES DOSS** . . . **Marsh., 317: 2 Hay, 205**

143. ——— *Right of adopted son to self-acquired immoveable property of his adoptive father.*—An adopted son does not stand in a better position with regard to the self-acquired immoveable property of his adoptive father than a natural-born son would occupy. **PURSHOTAM SHAMA SHENVI v. VASUDEV KRISHNA SHENVI** [8 Bom., O. C., 196

TARA MOHUN BHUTTACHARJEE v. KRIPAMOYEE DEBIA . . . **9 W. R., 423**

144. ——— *Succession of adopted son.—Rights among other heirs.*—When an adopted son is entitled to share with heirs other than the legitimately begotten sons of his adopted father, in the property of kinsmen, he takes the same share as the other heirs. The true meaning of paragraphs 24 and 25 of section V of the Dattaka Chandrika is that an adopted son and the adopted son of a natural son stand in the same position, and this rule does not extend to distinct collateral heirs. **DINO NATH MOOKERJEE v. GOPAL CHUNDER MOOKERJEE** [9 C. L. R., 379: 8 C. L. R., 57

145. ——— *Succession.—Sapinda relationship.*—The rights of an adopted son, unless contracted by express texts, are in every respect similar to those of a natural-born son. An adopted son takes by inheritance from the relatives, on the maternal side, of his adoptive father in the same manner as a son begotten would take. There is no difference as regards sapinda relationship between the adopted and natural-born son. **JOY KISHORE CHOWDERY v. PANCHOO BABOO** **4 C. L. R., 538**

146. ——— *Succession, lineal and collateral.*—According to Hindu law, an adopted son succeeds not only lineally, but also collaterally, to the inheritance of his adoptive father's relations. **SUMBHOOGHUNDER CHOWDERY v. NARAINI DEBIA** . . . **5 W. R., P. C., 100**

HINDU LAW—ADOPTION—continued.**5. EFFECT OF ADOPTION—continued.****Status of adopted son—continued.**

147. ——— *Termination of authority to adopt.—Succession of adopted son to collaterals in gotra not that of father by adoption.*—An instrument of permission (anumati patra) to a Hindu wife to adopt should she be left a widow, provided that "dattaka (adopted) son shall be entitled to perform your and my shraddh and that of our ancestors, and to succeed to the property." The husband and wife had a son born, who survived his father, succeeded to the property, and died before his mother, leaving a widow, who, as heir, took possession of it for her widow's estate. The mother then professed to exercise the above power, and in the suit arising thereupon—**RHOOBUNMOYEE DEBIA v. RAMKISHORE ACHARJ CHOWDERY**, 10 Moore's I. A., 279—it was decided that the son's widow, having acquired a vested interest, a new heir could not be so substituted for her. *Held* that, although such a substitution might have been disallowed without the adoption being held invalid for all other purposes, the above decision had determined that, upon the vesting of the estate in the widow, the power of adoption was incapable of execution, and was at an end: and that this would have been the conclusion if the question of the validity of the power had been raised without any previous decision upon it. An adopted son occupies the same position in the family of the adopter as a natural-born son, except in a few instances, which are accurately defined both in the Dattaka Chandrika and Dattaka Mimansa, governing authorities in the Bengal school. An adopted son succeeds not only lineally but collaterally to the inheritance of his relations by adoption. **SUMBHOOGHUNDER CHOWDERY v. NARAINI DEBIA**, 5 W. R., P. C., 100, referred to and followed. *Held* in this case, that the adopted son of the maternal grandfather of the deceased, though the gotra into which he was adopted was not the same as the latter's, was an heir nearer to him than such maternal grandfather's grandnephew. **PADMAKUMARI DEBI CHOWDHURANI v. COURT OF WARDS**

[I. L. R., 8 Calc., 302
I. R., 8 I. A., 229

Affirming decision of High Court in **PUDDO KOOMAREE DEBEE v. JUGGUT KISHORE ACHARJEE** . . . **I. L. R., 5 Calc., 615**

JUGGERNATH SAHAIE v. MUKKUM KOONWAR [3 W. R., 24

TRENOOWRIN CHATTERJEE v. DINONATH BANERJEE [3 W. R., 49

148. ——— *Succession of adopted son on the mother's side.*—An adopted son under the law prevailing in Bengal occupies, as regards inheritance, the same position in the family of the adopter as a natural-born son (except in a few instances defined in the Dattaka Chandrika and Dattaka Mimansa), succeeding collaterally, as well as lineally, his relations by adoption. **Padma Kumari Debi Chowdhurani v. Court of Wards**, I. L. R., 8 Calc., 302, referred to and followed. Where a natural-born son, had there been one, would have

HINDU LAW—ADOPTION—continued.**6. EFFECT OF ADOPTION—continued.****Status of adopted son—continued.**

been entitled to succeed a maternal uncle, as being brother's daughter's son to the latter.—*Held* that an adopted son, who had been adopted by a widow under her deceased husband's authority, was entitled, in like manner, to inherit, at the death of the widow, from her father's brother. **KALI KUMUL MOZUMDAR v. UMA SONKUR MOITRA**

[I. L. R., 10 Calo., 232; 13 C. L. R., 379
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Affirming the decision of the High Court in **UMA SONKUR MOITRA v. KALI KUMUL MOZUMDAR**
[I. L. R., 6 Calo., 265; 7 C. L. R., 145]

149. ————— *Collateral succession.*—*Son adopted in kritima form.*—A son adopted in the kritima form in the Mithila provinces does not become a member of the adopting family so far as collateral heirship is concerned, the relation of kritima for the purpose of inheritance extending to the contracting parties only. He can only succeed to his adoptive mother's property. **SHIBO KOORER v. JOOSUN SINGH. BOOLEE SINGH v. BUSUNT KOORER**

. 8 W. R., 155

COLLECTOR OF TIRHOOT v. HURROFERSHAD MOHUNT

. 7 W. R., 500

150. ————— *Rights of adopted son.*—*Adoption by widow after death of natural-born son.*—*Divesting of property.*—A Hindu widow, who adopts a son after the death of her natural-born son, divests herself of her estate. **JAMNABAI v. RAYCHAND NAHALCHAND**

. I. L. R., 7 Bom., 225

BYKANT MONEE ROY v. KRISTO SOONDEREE ROY

[7 W. R., 392]

151. ————— *Divesting of property.*—An adoption by the widow divests her of the right of inheritance to her husband's property and vests it in the adopted son. **COLLECTOR OF BARNILLY v. NARAYN DAY**

. 8 Agra, 349

152. ————— *Position of widow.*—*Divesting of property.*—Although the exercise of an act of adoption by the widow of a Hindu who died without male issue, and made in accordance with his request, divested the property from the widow and vested it in the adopted son, the widow sued for an undivided share in the joint property, and a decree was made directing her to be put in possession. *Held* that the widow must be assumed to have prosecuted the suit only as guardian for her adopted son; that the decree must be considered to be for his benefit, and that she was put in possession as trustee for him and accountable to him as guardian and trustee for the profits of the property, being entitled herself to a maintenance out of it. **DHURMO DOSS PANDEY v. SHAMA SOONDEREE DEBIA**

. 6 W. R., P. C., 43
[8 Moore's I. A., 229]

153. ————— *Divesting of property.*—*Vested right of inheritance.*—An inheritance having once vested cannot be defeated and di-

HINDU LAW—ADOPTION—continued.**5. EFFECT OF ADOPTION—continued.****Rights of adopted son—continued.**

vested by an adoption. **ANNAMMAH v. MABBU BALI REDDY**

. 8 Mad., 108

154. ————— *Divesting of property.*—In a suit to set aside an adoption on the ground that it had been made after the estate had vested in the widow of *K.*, the owner of the estate—*Held* the adoption was invalid. **THAYAMMAL v. VENKATARAMA**

. I. L. R., 7 Mad., 401

155. ————— *Succession of adopted son.*—*Divesting of estate.*—An adopted son, as such, takes by inheritance, and not by devise. A son cannot be adopted to the great-grandfather of the last taker after the lapse of several successive years, when all the spiritual purposes of a son, according to the largest construction of them, would have been satisfied. When the estate of a son is unlimited, and that son marries and leaves a widow his heir, she acquires a vested interest in her husband's property as widow, and a new heir cannot be substituted by adoption to defeat that estate, and take as an adopted son what a natural-born son would not have taken. By the mere gift of power of adoption to a widow, the estate of the heir of a deceased son vested in possession cannot be defeated and divested. **BHOOSUN MOYE DEBIA v. RAMKISHORE ACHARYA**

[3 W. R., P. C., 115; 10 Moore's I. A., 279]

GORINDO NATH ROY v. RAM KANAY CHOWDHRY

[24 W. R., 183]

156. ————— *Son adopted after succession opened out.*—*Hindu widow with permission to adopt.*—*Position of.*—*Divesting of property.*—A Hindu testator died, leaving all his property to *P.* and *B.*, his two sons, absolutely, in equal shares. *B.* died in 1845, leaving a minor son, *K.* *P.* died in 1851 without male issue, leaving a widow *B. D.*, and a daughter. *P.* also left a will, by which he gave, subject to certain trusts for the worship of the family idols, all his property to his widow *B. D.*, for her life, and on her death to his daughter's son (if any): the daughter died without issue before her mother. *B. D.* died in October 1864, leaving a will, of which she appointed her brother *G.* executor, and *G.*, in accordance with the directions in her will, took possession of the property, which *B. D.* took as widow and under the will of *P.* *K.* died in 1855, when still a minor, leaving a minor widow, and having made a will, by which he gave permission to his widow to adopt a son. The widow of *K.* adopted a son in August 1876. In a suit brought by the plaintiff as adopted son of *K.* and heir of *P.* to recover the property left by *P.*, the issue was raised whether, assuming the plaintiff to be the legally adopted son of *K.*, he was the heir of *P.* *Held* that his adoption not having taken place when the succession to the property of *P.* opened out on the death of *B. D.*, he was not entitled to the property; his adoptive mother could not claim on the death of *B. D.* to hold the property as trustee for the plaintiff: and inasmuch as the property must have vested in some one on the death of *B. D.*, and property

HINDU LAW—ADOPTION—continued.**5. EFFECT OF ADOPTION—continued.****Rights of adopted son—continued.**

once vested cannot, by Hindu law, be divested, the plaintiff was not entitled to succeed. **KALLY PROSONNO GHOSH v. GOCOOZ CHUNDER MITTAR**

[I. L. R., 2 Cal., 295]

157. ————— *Divesting of property.*—*A.*, who had a son, *B.*, by his wife *C.*, during the lifetime of his son executed an unoomuttee puttro in favour of *C.*, empowering her to adopt a son in the event of the death of *B.* *B.*, on coming of age, succeeded to the ancestral and other estate of his father who had died. Subsequently *B.* died childless, and his widow succeeded as heir to her deceased husband. *C.* afterwards exercised the power of adoption from her husband and adopted *D.* Held that, although as heir to *A.*, *D.* could not displace the widow and full heir of *B.*, and that although as heir to *B.* he came after *B.*'s widow and mother, *D.* might succeed when on their deaths he united in himself the capacities of heir to *A.* and heir to *B.* **JOY KISHORE CHOWDREY v. PANOHOO BABOO**

[4 C. L. R., 538]

158. ————— *Adoptive son claiming share in estates already vested in another before the date of the adoption.—Fraud.*—Shortly before his death in 1862, *A.*, by his will, gave his widow power to adopt a son. In consequence of fraud on the part of *B.*, the son of a brother of *A.*, in suppressing this will and setting up another, the will was not proved until 1874, when the widow exercised the power. *C.*, the widow of another brother, had died in 1867, and *B.* had succeeded to her estate. The adopted son now sued by his mother to recover a half share in *C.*'s estate, alleging that his adoptive mother, in consequence of the fraudulent act of *B.* in suppressing the will under which the power of adoption was given, and by setting up a false one, was unable to exercise the power of adoption before the death of *C.*, and that thus he had been deprived of the opportunity of succeeding to *C.*'s estate. Held that, although *B.* had committed fraud in suppressing the will and setting up a false one, and had so placed obstacles in the way of the adoptive mother of the plaintiff taking a son in adoption earlier, yet that, as the plaintiff was not in existence at the time the fraud was committed, such fraud was too remote so far as it affected him, and that the Court, as a Court of Equity, could not disturb the estate which had already vested in *B.* The right to succession is a right which vests immediately on the death of the owner of the property, and cannot, under any circumstances, remain in abeyance in expectation of the birth of a preferable heir not conceived at the time of the owner's death. **Keshub Chunder Ghose v. Bishen Pershad Boss, S. D. A., 1860, p. 340, and Bhobun Moyee Debia v. Ram Kishore Acharj Chowdhry, 10 Moore's I. A., 279, followed.** **NILCOMUL LAHURI v. JOTENDRO MOHUN LAHURI**

[I. L. R., 7 Cal., 178; 8 C. L. R., 401]

Held, in the same case by the Privy Council, affirming the decision of the High Court, that the adopted boy could not claim to share along with

HINDU LAW—ADOPTION—continued.**5. EFFECT OF ADOPTION—continued.****Rights of adopted son—continued.**

the nephew the estate which had belonged to the uncle, notwithstanding the nephew's conduct in reference to the exercise of the power to adopt, inasmuch as the date of this boy's birth rendered it impossible for him, under any circumstances, to have been made an adoptive heir to the uncle. According to Hindu law, as laid down in the decided cases, an adoption effected after the death of a collateral relation does not entitle the adopted son to come in among the heirs of such collateral. **BHUBANESWARI DEBI v. NILCOMUL LAHURI**

[I. L. R., 12 Cal., 18; I. L. R., 12 I. A., 137]

159. ————— *Vested estate divested by adoption.—Power to adopt.*—*A.*, a Hindu, having succeeded to his father's estate, died unmarried, leaving him surviving his father's mother *S.*, and his step-mother *N.* After *A.*'s death, *N.*, under a power from her husband, adopted *B.* as a son to *A.*'s father. *Semble.*—That the adoption did not divest the estate of *S.* in whom *A.*'s estate had vested on his death. **DROBOMOYEE CHOWDHRAIN v. SHAMA CHURN CHOWDREY**

I. L. R., 12 Cal., 246

6. FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER.

160. ————— *Death of adopted son.—Estate of Hindu widow.—Adopted son dying a minor.*—The widow of a childless member of a divided Hindu family is entitled to a life-interest in her husband's estate after the death of an adopted son before attaining majority. **SOONDRE KOOMAREE DEBEA v. GUDADHUR PERSHAD TEWARRE**

[4 W. R., P. C., 116; 7 Moore's I. A., 54]

161. ————— *Widow with power to adopt.—Power to adopt another son.*—*G.* executed an unoomotee potro to his wife *S.* to adopt, on the failure of each adopted son, five sons in succession. After his death *S.* adopted a boy who died ten or twelve years later, after which she adopted another, whose adoption it was now sought to have declared invalid. The contention in special appeal was that, as the son first adopted lived to an age sufficiently mature to perform all the acts of spiritual benefit, to secure which the unoomotee potro was executed, and it should be presumed that he performed all those acts, the power given to *S.* ceased to have any operative force. Held that the contention was not supported by the Privy Council cases cited, and was opposed to the general principles of the Hindu law: a son in the situation of the first adopted son in this case cannot exhaust the whole of the spiritual benefit which a son is capable of conferring on his deceased father. **RAM SOONDUR SINGH v. SUBBANEE DOSSEE**

[22 W. R., 121]

162. ————— *Widow with authority to adopt, Position of.—Limitation.*—A Hindu died after leaving directions with his widow to adopt a son. On a partition of the joint property among his brothers and widow, a certain property was allotted to the widow as her share; afterwards, in 1849,

HINDU LAW—ADOPTION—continued.**6. FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER—continued.**

Widow with authority to adopt, Position of—continued.

the brother dispossessed her. In 1851 she adopted a son, who attained his majority in 1865, and in 1866 sued for possession of the property. *Held* that the possession of the widow previous to the adoption was not that of a trustee for the son to be adopted so as to prevent limitation. **GOBIND CHANDRA SARMA MAZOOMDAR v. ANAND MOHAN SARMA MAZOOMDAR** [2 B. L. R., A. C., 313

163. ——— Failure to adopt.—Widow with power to adopt not adopting.—Suit for estate as widow.—Authority was given by deed, by a childless Hindu in Bengal, to his widow to adopt a son at his decease. The widow did not exercise that power, and, many years after her husband's death, brought a suit in her character as widow claiming his succession in the family estates. *Held* that the mere fact of there being authority given her by her husband to adopt a son did not, before an adoption had actually taken place, supersede and destroy her personal right as widow to sue. **BAMUNDOSS MOOKERJEE v. TARINER** . . . 7 Moore's I. A., 169

164. ——— Inheritance, Widow's right to.—A husband's express authorisation, or even direction, to adopt, does not constitute a legal duty on the part of the widow to do so, and for all legal purposes it is absolutely non-existent till it is acted upon. When a Hindu, by his will, gave his widow authority to adopt, if necessary, from one to three dattaka sons, and she, having neglected to do so, brought a suit to recover possession of her husband's property and for an account of the administration, against the administrator of the estate, after having ineffectually attempted to get the letters of administration recalled and fresh letters granted her as heiress of her husband. *Held* that she was entitled to the decree she prayed for. **UMA SUNDURI DABER v. SOJROBINER DABER** [I. L. R., 7 Cal., 289: 9 C. L. R., 83

See **DINO MOYER CHOWDHRAIN v. REHLING** [2 W. R., Mis., 25

DINO MOYER DOSSEN v. DOORGA PERSHAD MITTER . . . 3 W. R., Mis., 6

165. ——— Omission of widow to adopt as directed in will.—Right of inheritance.—When a widow neglects to adopt a second son on the death of the first adopted son, as directed by her deceased husband, she commits a wrong, but may nevertheless be the heiress of the first adopted son. **SREENUTTY DOSSEN v. TARRACHUND COONDOD CHOWDHRY** . . . Bourke, A. O. C., 43

7. EFFECT OF INVALIDITY OF ADOPTION.

166. ——— Adoption held to be invalid.—Position of person adopted.—Where an adoption is held invalid, the natural rights of the person adopted remain unaffected. **BAWANT SANKARA PANDIT v. AMBARAY AMMAL** . . . 1 Mad., 363

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8. EVIDENCE OF ADOPTION.

167. ——— Suit as to validity of adoption.—Nattore Raj.—In a suit as to the validity of the adoption of a claimant to the Nattore Raj, *Held*, notwithstanding a finding of the Court of first instance that the adoption was not proved, that the evidence fully supported the adoption. **CHUNDERNATH ROY v. GOBIND NATH ROY**

[11 B. L. R., P. C., 86: 13 W. R., 221

COLLECTOR OF MOORSHEDABAD v. SHIBSUDEEN DABER . . . 11 B. L. R., P. C., 86 [13 W. R., 226

upholding the decision of the High Court.

See **KISHEN MONNE DEBIA v. KASHEE SOONDARI DEBIA** . . . W. R., F. B., 106

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168. ——— Deeds of adoption.—Internal probabilities.—Witnesses.—Deeds of adoption executed long ago, several witnesses to the execution of which having died, should be judged of more from their internal probabilities and from the indirect evidence than from the testimony of witnesses either subscribing the deeds or present at the same time. **KISHEN MONNE DEBIA v. KASHEE SOONDAREE DEBIA** [W. R., F. B., 106

169. ——— Suit to establish adoption.—Test of validity of deeds of adoption.—In cases of adoption careful scrutiny is necessary. The party seeking to establish an adoption is bound to produce the best evidence procurable. The rule for testing the validity of a deed of adoption is contemporaneity of execution and publication of the deed of permission. In the absence of the original deed, all the circumstances bearing upon the alleged deed, and all the probabilities for and against its genuineness, must be considered. **ROOPMONJOREE CHOWDHRAIN v. RAMLAL SIRCAR. GREESH CHUNDEE LAHOREE v. RAMLAL SIRCAR** . . . 1 W. R., 144

170. ——— Adoption by dhurm-putr.—Ceremony of dhurm-putr.—An adoption made by a Parsee immediately before his death would render extremely improbable the execution of a will by him a very short time previous thereto, and therefore call for very clear proof to establish its existence. Although in cases of adoption by dhurm-putr (a partial adoption) it is not indispensably necessary that a declaration should be made on the third day after the decease, yet it is usual to make such a declaration and to take a writing from the dhurm-putr. In the absence of any such writing, and upon the whole evidence, the adoption in this case was pronounced to

HINDU LAW—ADOPTION—continued.**8. EVIDENCE OF ADOPTION—continued.****Adoption by dhurm-putr—continued.**

be as a paluk-putr, and not merely as a dhurm-putr.

HOMABHAI v. PUNJABHAI DOSABHAI
[5 W. R., P. C., 102]

171. ——— Requisition for validity of adoption.—Registration.—Acknowledgment in writing.—According to Hindu law, neither registration of the act of adoption, nor any written evidence of that act having been completed, is essential to its validity. In no case should the rights of wives and daughters be transferred to strangers or to more remote relations, unless the fact of adoption by which this transfer is effected be proved by evidence free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth. Although the Hindu law does not require that adoptions should be acknowledged in writing, it is usual, when persons in the situation of a zemindar adopt sons, to acknowledge such adoption in writing, to give notice to the ruling power, and to invite the neighbouring zemindars and others to be present at such an adoption. **SUTROOGUN SUTPUTTY v. SABITRA DYI** . . . 5 W. R., P. C., 109

172. ——— Deed expressing wish to adopt a particular person.—A cousin and heir to an insane proprietor having been sued for the amount of a decree, and application having been made for execution against the estate of the said proprietor, after his death, it was urged that the estate had become the property of a minor who had been adopted by the insane proprietor previously to his decease, and could not be held liable for the debts of the cousin and heir, who, moreover, had formally relinquished his right to it. The plaintiff's claim rested on the contention that the formalities required to validate an adoption had not been attended to in this case. This contention was met by the plea that the adoption was complete, but that even if it had not been so, a document declaring the deceased proprietor's desire to adopt the minor had the effect of a testament. *Held* by the High Court that, though the intention of the deceased proprietor to adopt the minor was clear, that intention, even as expressed in the above-mentioned document, which was not testamentary in character, did not amount to an adoption in the absence of the necessary formalities. The estate was accordingly declared liable for the amount of the decree against the cousin and heir. **BANEE PEEHAI v. COURT OF WARDS** . . . 25 W. R., 192

173. ——— Evidence of conditional adoption.—In a suit in which a claim was made in virtue of an alleged adoption to the estate of a deceased Hindu, the widow made a compromise, not in writing, with the claimant where the adoption was admitted, but alleged to have been on condition that the widow should enjoy the entire property for her life without power of alienation, and that after her death her minor daughters should take the self-acquired property, and the claimant should succeed to the ancestral estate. *Held* that the evidence to establish such a conditional adoption must, as in the

HINDU LAW—ADOPTION—continued.**8. EVIDENCE OF ADOPTION—continued.****Evidence of conditional adoption—continued.**

case of a nuncupative will, be very strong. **IMRIT KOWAR v. ROOP NARAIN SINGH** . 6 C. L. R., 76

9. DOCTRINE OF FACTUM VALET AS REGARDS ADOPTION.

174. ——— Application of maxim.—Gift by widow without authority of husband's only son.—The maxim *quod fieri non debuit factum valet* considered and its application pointed out. The gift by a widow of her husband's only son without his express authority given during his lifetime is null and void *ab initio*, and cannot be supported by this maxim, because such an adoption would be, as regards her, not *quod fieri non debuit*, but *quod fieri non potuit*. **LAKSHMAPPA v. RAMAYA**
[12 Bom., 364]

175. ——— Adoption of daughter's son among Brahmins.—Amongst Brahmins an adoption which is incestuous and invalid, as the adoption of a daughter's son, cannot be supported on the authority of the maxim *factum valet quod fieri non debuit*. **BHAGIRATHAI v. RADHABAI**
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176. ——— Limitation of maxim.—Limits within which the maxim *quod fieri non debuit factum valet* as to adoption applies pointed out. **GOPAL NARHAR SAFFRAY v. HANMANT GANESH SAFFRAY** . . . I. L. R., 3 Bom., 273

177. ——— Recognition of maxim.—Schools of Hindu law other than Bengal.—The maxim *quod fieri non debuit factum valet* is recognised to some extent by other schools of law in India besides that of Bengal. **WOOMA DARR v. GOCOOI-ANUND DASS**
[I. L. R., 3 Calc., 587; 2 C. L. R., 51]

178. ——— Suit by adoptive father to set adoption aside.—*Held* that, when an adoption of a son has once been absolutely made and acted on, it cannot be declared invalid or set aside at the suit of the adoptive father. **SUKHBASI LAL v. GUMAN SINGH** . . . I. L. R., 2 All., 366

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1. RESTRAINT ON ALIENATION.

1. ———— Restraint invalid as incon-
sistent with Hindu law.—*Restraint by will.*—
A restraint on alienation put by a testator on his
descendants was considered void as being unknown
to and inconsistent with Hindu law. NITAI CHARAN
PYKE v. GANGA DAS

[4 B. L. R., O. C., 365, note

2. ———— Impartibility, Effect of.—
Chota Nagpore Raj, Alienation of portion of.—The
fact that the Raj of Chota Nagpore is an impartible
one does not prevent the Maharaja for the time being
from alienating a portion of it in perpetuity. NA-
RAIN KHOTIA v. LOKENATH KHOTIA

[I. L. R., 7 Calc., 461: 9 C. L. R., 243

3. ———— Alienation of im-
partible estate.—*Custom.—Succession to Raj.*—Im-
partibility of an inheritance does not, as a matter of
law, render it inalienable. The owner of an estate
which descends as an impartible inheritance is not,
by reason of its impartibility, restricted to making
grants or gifts enuring only for his own life. The
power of alienation resting upon the general law,
inalienability, if existing, must depend upon family
custom in this respect, and of such custom proof is
required. Anund Lall Singh Deo v. Dheraj Guru
Narain Deo, 5 Moore's I. A. 52, followed. In the
case of a titular raj, of which the lately deceased
Raja had made a mokurrari pottah, or grant in per-
petuity, of part of the zemindari lands thereto be-
longing, in favour of a younger son, it was found that
the only custom proved was that the raj estate de-
scended to the eldest son, to the exclusion of the other
sons, and that there was no proof of a custom pro-
hibiting such an alienation as that made by the grant.
Held that the mokurrari grant was not invalidated

HINDU LAW—ALIENATION—continued.**1. RESTRAINT ON ALIENATION—continued.****Impartibility, Effect of—continued.**

by reason of the raj estate being by custom impart-
ible. UDAYA ADITYA DEB v. JADAB LAL ADITYA
DEB . . . I. L. R., 8 Calc., 199

4. ———— Condition not to alienate.—
Restriction of enjoyment of estate.—Upon a division
of family property, the parties to the division entered
into an agreement that the property of any one of
the parties to the agreement or their heirs dying,
leaving no issue, should not be sold or transferred as
a gift, but should on his death be divided by the
other shareholders. In a suit by one of the sharehold-
ers to recover the share to which the plaintiff was
entitled under the agreement from the defendant, a
purchaser from the son of the person to whom the
property was allotted upon the division,—Held that
an estate cannot be made subject to a condition which
is repugnant to any of its ordinary legal incidents,
and that the power of disposition, being a legal in-
cident of the estate which passed to the vendor, could
not be taken away by the agreement. VENKATRAM-
ANNA v. BRAMMANNA SASTRULU . 4 Mad., 345

5. ———— Alienation and
suit by alienee for mutation of names.—On the
construction of an ikarnama or deed of agreement
and partition of an ancestral estate among several
brothers,—Held that the terms of the deed were not
restrictive upon the power of each brother to alien-
ate his separate share. A., one of the brothers, had
his share registered on the Collector's books as owner,
and by deed of sale conveyed such share to his daugh-
ter, who was also his heir. The Collector, on the
objection of one of A.'s brothers (who denied A.'s right
to alienate, on the ground that it was ancestral pro-
perty), refused to register the daughter's name as
proprietor. Held, that the Collector was bound by
Bengal Regulation VIII of 1800, section 21, to regis-
ter her name as purchaser, but that such mutation of
name was to be without prejudice to the question of
the right of succession. COWULRAS KOONWAR v.
LALL BAHADUR SINGH . 9 Moore's I. A., 39

2. ALIENATION BY SON.

6. ———— Alienation without father's
consent.—*Mitakshara law.*—Under the Mitak-
shara law an alienation by a son without the father's
consent is invalid. SHEO BUTTUN KOONWAR v.
GOUR BEHARRI BRUKUT . 7 W. R., 449

3. ALIENATION BY UNCLE.

7. ———— Right of nephew to object to
alienation.—A nephew is not competent by Hindu
law to object to any alienation of ancestral property
made by his uncle. ADJODHIA GIE v. KASHEE GIE
[4 N. W., 31

4. ALIENATION BY FATHER.

8. ———— Alienation with consent of
son.—*Right of grandson to object to alienation.*—
An alienation made by a Hindu with the consent of

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Alienation with consent of son—continued.**

his son cannot, under the Mitakshara law, be questioned by the grandson. **BURAIK CHUTTAR SINGH v. GREEDHAREE SINGH** . . . **9 W. R., 837**

9. ——— Grandson's right to set aside alienation.—*Suit by grandsons, sons of a son adopted in *kritima* form to set aside alienation.*—Where the son of a certain person, who had been adopted as a *kritima* son, sought to set aside certain alienations of self-acquired property which the adoptive father had made, on the double ground that as grandsons they had an interest in that property, and that the alienations were for improper purposes,—*Held* that, as the alienations were proved to be for legitimate purposes, and the relations established by the *kritima* form of adoption were confined to the contracting father and did not extend beyond them on either side, the plaintiffs in this case had no right to set aside the alienations which the adoptive father of their father had made. **JUSWANT SINGH v. DOOLAH CHUND** . . . **25 W. R., 255**

10. ——— Self-acquired property.—*Mithila law.—Separate acquisition.*—According to Mithila law, the owner of self-acquired property has full power of disposition over it. **BISHEN PERKASH NARAIN SINGH v. BAWA MISSEER** **[12 B. L. R., P. C., 430: 20 W. R., 137]**

11. ——— Ancestral property.—*Outcast, Right of.*—There is a distinction between ancestral and self-acquired property under the Mitakshara law, with regard to the right of a father to dispose of it. The fact of his being an outcast would not prevent him from exercising his rights over the property to the same extent as he might otherwise have done. **OSOODHYA PERSHAD SINGH v. RAMSAURAN** . . . **6 W. R., 77**

12. ——— Ancestral property.—*A., a Hindu, sued B., the widow of C., claiming to be entitled with others as heirs of C. under the Mitakshara law to certain property. The suit was compromised on the terms, as to one portion of the property, that it was to be retained by B. for life, and after her death to be divided according to specified shares between A. and the other claimants. After B.'s death A. obtained possession of his share under the deed of compromise. A. alienated the property, and during his lifetime his sons sued to set aside the alienation on the ground that it was ancestral property. Held, A. took the property absolutely, and not as ancestral property. MAHABIE KOWEE v. JUBHA SINGH . . . **8 B. L. R., 38: 16 W. R., 221***

13. ——— Non-existence of son at date of acquisition.—*Suit to recover a share of the property of the plaintiff's maternal grandfather. The facts found were as follows: Plaintiff's mother and 1st defendant's mother were sisters, daughters of one M., who, having no male issue, selected, in pursuance of a special custom, the 1st defendant's father as a son-in-law who should take his property as if a son. On the death of M., the 1st defendant's father entered*

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Self-acquired property—continued.**

ed into possession of the property, and afterwards, during the minority of his son (1st defendant), associated with himself the plaintiff on promise of a share. In accordance with this agreement, the plaintiff joined the 1st defendant's family and continued for many years aiding in the management and improvement of the property, until, a short time before the present suit was brought, the 1st defendant turned the plaintiff out of doors and refused to give him the promised share. Upon these facts,—*Held*, by **HOLLOWAY and LYNES, JJ.**, that the 1st defendant's father was what is called in English law a purchaser, and had all the powers of disposition existent over self-acquired property; that also there was a complete adoption or ratification of the father's contract by 1st defendant, and that he ought to be held to it. *By LYNES, J.*—That the right of 1st defendant's father to dispose of property self-acquired might depend upon whether 1st defendant was or was not in being at the date of the acquisition. **CHALLA PAPI REDDI v. CHALLA KOTI REDDI alias KOTAPPA** **[7 Mad., 25]**

14. ——— Property inherited by father collaterally.—*Power of son to prevent alienation.*—In execution of a decree against A., a Hindu living under the Mitakshara law, his right, title, and interest in a certain property, part of which he had acquired as heir to his nephew and cousin, was sold. A suit brought by A.'s sons to obtain possession of their share of the property, on the ground that the debt for which the sale was held had not been incurred under a legal necessity, was dismissed so far as it related to the part of the property which A. had inherited collaterally. According to the Mitakshara, a son cannot prevent alienation by his father of property which the latter has inherited collaterally. The restriction upon the father's power of alienation only applies to the grandfather's property. **NURD COOMAR LALL v. RAZERBOODDEEN HOSSEIN** **[10 B. L. R., 183: 18 W. R., 477]**

LOOCHUN SINGH v. NEMDHAREE SINGH

[20 W. R., 170]

15. ——— Right of father in undivided Mitakshara family.—The father in an undivided family under the Mitakshara law has no interest in the ancestral property which can form the subject of a sale, beyond his separated share of the proceeds, having merely a life-interest in a common property, which he can neither give away nor sell. **BHETRO PERSHAD v. BASISTO NARAIN PANDRY** **[16 W. R., 31]**

16. ——— Alienation by man without issue.—*Power of the unborn son to contest alienation subsequently.*—*Held* that alienation of property made by a Hindu, who at the time of such alienation has no issue living, cannot be contested by a son who at the time of alienation was neither born nor begotten. **MADHO SINGH v. HURMAT ALLY** **[3 Agra, 432]**

JADO SINGH v. RANEE . . .

5 N. W., 113

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.**

17. ——— Ancestral property.—Necessity.—Effecting release from prison.—Ancestral property may be sold by a father to effect his release from prison. *DULKEP SINGH v. SREEKISHOON PANDY* **4 N. W., 83**

18. ——— Right of son to set aside sale of ancestral property made for his father's debts.—*M.*, a Hindu, who had, on the death of his brother *S.*, succeeded as exclusive proprietor to certain immovable property which had descended to him and *S.* on the death of their father, and had been held jointly by them, mortgaged the property as security for the repayment of moneys advanced to him by *S. R.* The debt was not contracted by *M.* for an immoral purpose. *S. R.* obtained a decree on the bond hypothecating the property, and, in good faith, brought the property to sale in execution of the decree and became the *bond fide* purchaser.—*Held* that a son born to *M.* after the mortgage-debt was incurred was not entitled to come in and set aside all done under the decree and execution, and recover back a moiety of the estate. *SALIG RAM v. LUITA PERSHAD* [6 N. W., 329]

19. ——— Illegitimate son.—Assignment for maintenance.—Since by the Hindu law the illegitimate son of a person belonging to one of the "twice-born" classes is entitled to maintenance, an assignment to him by his father, having no legitimate son then born, of a part of his ancestral estate, being in performance of a legal obligation, is on a different footing from a voluntary alienation to a stranger, and is valid under the law of the Mitakshara. *Quere*,—Whether, under the Mitakshara law, a father who has no child born to him is competent, without legal necessity, to alienate the whole or any part of the ancestral estate; or whether the rights of unborn children are so preserved as to render such an alienation unlawful. *PARICHAT v. ZALIM SINGH* **I. L. R., 3 Calc., 214**
[L. R., 4 I. A., 159]

20. ——— Alienation before birth of son.—Mitakshara law.—Certain property, which had been mortgaged by a Hindu governed by Mitakshara law while yet childless, was subsequently, after the birth of a son, sold in execution of a decree obtained on the mortgage after the birth, in a suit to which the son was not made a party. *Held* that the son could not disturb the possession of the execution-purchaser. *Held*, also, distinguishing the case of *Lachman Das v. Gridhar Chowdhry*, **I. L. R., 5 Calc., 866**, that in the suit upon the mortgage, the son was not a necessary party. *DOOLLE CHAND v. WOOMA SUNKUR PERSHAD* **7 C. L. R., 429**

21. ——— Right acquired by son in ancestral property on birth.—Mitakshara law.—Inheritance of share in village.—Interest of son acquired on birth.—A mouzah, of which the proprietary right formerly belonged to one zamindar, the ancestor of the plaintiff, was sold, whilst in the possession of the generation succeeding him, for arrears of revenue, and became the property of the Government by purchase. The Government, before

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Right acquired by son in ancestral property on birth—continued.**

the birth of the plaintiff, restored it in four equal shares to the family of the old proprietors, then consisting of four members, one being the plaintiff's father, who thus obtained possession of a five-biswas share. *Held* that whatever interest the plaintiff as son might have under the Mitakshara law in ancestral property, it could not be said that, at the time of his birth, there was any proportionate share in the mouzah in which he could by birth acquire an interest, except this five-biswas share. In this suit the plaintiff sought to have set aside, so far as it affected him, a decree, to which his father had consented, declaring his father's right to a five-biswas share only. *Held* that, even supposing that the father (who was living) might have some right in him to procure an alteration of the grant, such a right was not one in which a son would by his birth acquire an interest. *UJAGAR SINGH v. PITAM SINGH*

[I. L. R., 4 All, 120
L. R., 8 I. A., 180]

22. ——— Right acquired by unborn son.—Right to ancestral property not defeated by will of father.—According to the Hindu law which obtains in the Madras Presidency, the right of a son in the womb to ancestral property cannot be defeated by a will or gift. *Quere*,—Whether this rule would govern the case of an alienation for value. *MINAKSHI v. VIRAPPA* **I. L. R., 8 Mad., 89**

23. ——— Alienation without consent of children.—Mithila law.—Under the Mithila law, the father of a Hindu family cannot give a mokurrari lease of land at a nominal rent as a reward for faithful service, when his children being infants do not consent to such grant. *PRATAPNABAYAN DAS v. COURT OF WARDS* **3 B. L. R., A. C., 21**
[11 W. R., 843]

24. ——— Legal necessity.—Ancestral property.—Mitakshara law.—To justify an alienation of ancestral property, a legal necessity for the sale must be strictly proved to have existed, and such necessity cannot be inferred from the habits and general character of a vendor. *MITTRAJIT SINGH v. RAGHUBUNSI SINGH* **3 B. L. R., Ap., 5**

NOWBUTTON KOER v. GOURN DUTT SINGH
[6 W. R., 193]

25. ——— Alienation proportionate to the necessity.—The rule that only so much of the property should be sold as will meet the necessity does not apply to cases where the excess is small or where the money really required cannot otherwise be raised. *LUCHMERDHUR SINGH v. EK-BAL ALI* **3 W. R., 75**

26. ——— Mitakshara law.—Right of son to prevent or set aside alienation by father.—According to the Mitakshara law, a son has an equal right with his father in ancestral property. He can compel the father to divide the property during his lifetime, and any alienation by the father

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Legal necessity—continued.**

made after the birth of the son, without the consent of the son, unless for a purpose justified by the Hindu law as a legal necessity, will not bind the son. If the father, during the minority of the son, alienated any property in fraud of his creditors, such fraud would not bind the son, who was neither a party nor was privy to such fraud. **BHEE KISHORE SUNEY SINGH v. HUR BULLUB NARAIN SINGH** . 7 W. R., 502

27. ——— Suit for declaration of future right to a share in joint property.—A member of an undivided Hindu family living under the Mitakshara law in his father's lifetime brought a suit for declaration of his future right to one-sixth share in a portion of the immovable property of the family, and to set aside an alienation of it by his father, as having been made without legal necessity. *Held* that no such suit was maintainable. **RAOL GORAIN v. TEZA GORAIN** . 4 B. L. R., Ap., 90

28. ——— Consent of son.—Property not partible among members of joint family.—Custom.—Where, in a part of the country the general law of which is the Mitakshara, a custom exists with regard to ancestral immovable property that it is not partible among the members of the joint family, but descends from the father to his eldest son, the father cannot alienate such property without the concurrence of his son, unless such alienation is justified by family necessity. **RAM NARAIN SINGH v. PERTUM SINGH** . 11 B. L. R., 397 [20 W. R., 189]

29. ——— Family distress.—Pious purposes.—Mitakshara law.—According to the Mitakshara law, a father is not incompetent to sell immovable property acquired by himself. Landed property acquired by a grandfather, and distributed by him amongst his sons, does not by such gift become the self-acquired property of the sons, so as to enable them to dispose of it by gift or sale without the consent and to the prejudice of the grandson. The sale by a father of ancestral immovable property, without the concurrence of his sons, is not necessarily void, though it may be avoided, unless the purchaser can show that it was made, during a season of distress, for the sake of the family or for pious purposes. In the absence of evidence to the contrary, it must be assumed that the price received by the father became a part of the assets of the joint family; and therefore, if the son seeks the aid of the Court to set aside the purchase, he must do equity and offer to repay the purchase-money, unless he can show that no part of such purchase-money or the produce of it has ever come to his hands. **MUDDUN GOPAL THAKOOR v. RAM BUKSH PANDY** [6 W. R., 71, 74]

30. ——— Alienation without consent of son.—Ratification.—In a suit to recover possession of certain ancestral fields, sold during the absence of the defendant, who was united in interest, by his father, to the plaintiff in consideration of money advanced by her out of her stridhan for the

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Alienation without consent of son—continued.**

purpose of building the family house of which the defendant possessed himself after his father's death, —*Held* that the defendant by retaining possession of the house ratified the act of his father and elected to take the house in lieu of the ancestral fields, the sale of which was declared to be valid and possession thereof given to the plaintiff. **GANGABAI v. VAMANAJI DATAR** . 2 Bom., 301

31. ——— Power of son to control father's alienation of property liable to obstruction.—Right of son at birth.—A son cannot control his father's act in respect of a property the succession to which is liable to obstruction. It is only in respect of property not subject to obstruction that the wealth of a father and grandfather becomes the property of his sons or grandsons by virtue of birth. **JAWAHIR SINGH v. GUYAN SINGH** [3 Agra, 78]

32. ——— Gift by father of joint family of share of ancestral estate, moveable and immovable.—A Hindu father, while unseparated from his son, has no power, except for purposes warranted by special texts, to alienate to a stranger his undivided share in the ancestral estate, moveable or immovable. **BABA v. TIMMA** [I. L. R., 7 Mad., 357]

33. ——— Power of son to set aside alienation.—Sale of ancestral property.—Judgment-debt.—Evidence of necessity.—The sale of a joint ancestral estate for the discharge of a judgment debt incurred by a father for moneys borrowed by him, which are not shown to have been borrowed for, or applied to improper purposes, is not impeachable or voidable by his sons. A judgment-debt is a *prima facie* proof of necessity. **BROWNE v. ROOF KISHORE** . 5 N. W., 89

34. ——— Ancestral property.—Mitakshara law.—T. S., a Hindu, who with his son J. N. formed a joint Hindu family subject to the Mitakshara law, executed in favour of D. a bond, whereby he professed to pledge a share of certain family property as security for the repayment of money advanced to him by D. Default being made in payment of the loan when due, D. brought a suit on the bond against T. S., and obtained a decree for the amount secured thereby, in execution of which decree he attached and caused to be sold the right, title, and interest of T. S. in certain other family property not covered by the bond, and himself became the purchaser thereof, and took exclusive possession of the property. In a suit brought by J. N. against T. S. and D. to recover possession of the property purchased by D., on the ground that no legal necessity existed for the loan, —*Held* that T. S. had no individual right to any portion of the property which he could pass to a third person, and therefore J. N. was entitled to have the alienation set aside, and to recover possession of the property. There being nothing amounting to any voluntary representation

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Power of son to set aside alienation—continued.**

by *T. S.* of his having any right or interest in the property, or any representation of fact made by *T. S.* in order to induce *D.* to advance the money, and nothing to show that there was no other property out of which the decree could be satisfied, no equity arose between *T. S.* and *D.* such as entitled the latter to call on *T. S.* to divide the property with his son, so as to make the share of *T. S.* available by *D.* to the extent of the loan. *JUGDEEP NABAIN SINGH v. DEENDIAL*. 12 B. L. R., 100: 20 W. R., 174

S. C. on appeal

[1 L. R., 3 Calo., 198: 1 C. L. R., 49
L. R., 4 I. A., 247

SOOMRUP THAKOOR v. CHUNDER MUN MISSEER
[3 C. L. R., 282

35. ———— *Power of father to alienate ancestral property.*—*F.*, during the minority of his son *E.*, sold, in order to raise money for immoral purposes, the ancestral property of the family. The purchaser acted in good faith and gave value for such property. *Held*, by the majority of the Full Bench (SPANKIE, J., and OLDFIELD, J.) in a suit by *E.* against the purchaser and *F.* to recover such property and to have such sale set aside as invalid under Hindu law, that such sale was not valid even to the extent of *F.*'s share, and that *E.* was entitled to recover such property as joint family property. *Held*, per PEARSON, J., that *E.* could not recover such property, and that the purchaser, having acted in good faith, took by the sale *F.*'s share in such property and might have such share ascertained by partition. *CHAMAILI KUAB v. RAM PRASAD*. . . . I L. R., 2 All., 267

36. ———— *Power of father to alienate ancestral property.*—*D.*, in pursuance of a promise to give his daughter a dowry, about two years after her marriage, made a gift of joint ancestral property to *G.*, her father-in-law. *P.*, *D.*'s son, sued his father and *G.* to have the gift set aside as invalid under Hindu law. *Held* that the gift, not having been made with the plaintiff's consent, and not being for any purpose allowed by Hindu law, was invalid, and that the plaintiff was entitled to have it set aside, not to the extent only of his own share in such property, but altogether. *GANGA BRISHESHAR v. PIRTHI PAL*. I L. R., 2 All., 635

37. ———— *Mitakshara law. Alienations for joint debts.*—*Warts.*—Under the Mitakshara law, according to which the father and son are joint owners of the ancestral estate, the son's power to prevent alienations by the father extends only to acts of waste, and not to alienations for the payment of joint family debts, and for the maintenance of the family. *BIRAMBHUP NAIK v. SUDASHREE MAHAPATRU*. . . . 1 W. R., 96

38. ———— *Liability of son for father's debts.*—*Necessity.*—*Minor sons.*—*Debt contracted*

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

to enable father to earn a maintenance.—The expression "family necessity," justifying the sale of ancestral property, must be construed reasonably, and the head of the family and those dealing with him must be supported in transactions which, though in themselves diminishing the estate, yet prevent or tend to prevent still greater losses. A reasonable latitude must be allowed for the exercise of a manager's judgment, especially in the case of a father, though this must not be extended so far as to free the persons dealing with him from the need of all precautions where a minor son has an interest in the property. The fact that a mortgage or a bond, to pay off which ancestral property is sold, had some time to run, is not a sufficient reason to disprove an otherwise apparent family necessity. The Hindu law recognises a debt contracted by the father of a family to enable him to earn a maintenance as one contracted under pressure of a family necessity. *BABAJI MAHADEVI v. KRISHNAJI DEVI*. . . . I L. R., 2 Bom., 666

39. ———— *Impartible zemindari.*—*Self-acquired property.*—*Zemindari inherited from maternal grandfather.*—The course of decisions in the Madras Presidency from 1818 has been to recognise equal ownership by the son in the grandfather's estate, though it may not be divided between the father and the son, and to uphold the father's alienation only to the extent of his share. *Semble*,—The decision in *Girdharee Lall's case*, 14 B. L. R., 187, was not intended to vary the courses of decisions in this Presidency. *Semble*,—The doctrine of the pious duty of the son to pay his father's debts does not apply in the case of an impartible zemindari, where the son is not able to protect his interest as in the case of ordinary property by electing a division. *MUTTAYAN CHETTI v. ZEMINDAR OF SIVAGIRI*

[1 L. R., 3 Mad., 370

But,—*Held* on appeal to the Privy Council, which reversed the decision of the High Court. The estate which a son takes by heritage from his father constitutes assets by descent for the payment of his father's debt, not incurred for any immoral or vicious purpose. This estate may be attached and sold in execution of a decree upon such a debt, and that it is an impartible zemindari does not alter the case. The principle that the ancestral property, in which the son acquires an interest by birth, is liable for the father's debt, unless within the above exception, holds good by the Mitakshara law as administered in Madras as well as in Bombay and Bengal—*Girdharee Lall v. Kantoo Lall*, 14 B. L. R., 187: S. C. L. R., 1 I. A., 521, referred to and followed. Part of an impartible zemindari inherited from a maternal grandfather was hypothecated by the zemindar as security for a debt not within the above exception. *Held* that all the right, title, and interest which had come to his son by heritage from the indebted zemindar, as well in the hypothecated part as in the rest of the zemindari, were liable so far as they had not been administered in payment of the father's debt, to be attached and sold in execution of

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

a decree against the father, based on his admission of the debt. A zemindari inherited from a maternal grandfather is not "self-acquired" property. *Quere*,—Whether the zemindar, having inherited from his maternal grandfather, was under the same restriction, in reference to alienation as against the son, as he would have been if the property had come through the male line. *MUTTAYAN CHETTI v. SANGLI VIRA PANDIA CHINNATAMBIAR (ZEMINDAR OF SIVAGIRI)*

[I. L. R., 6 Mad., 1

L. R., 9 I. A., 128; 12 C. L. R., 169

40. ——— Ancestral property.—Son's share.—Rights of coparceners.—Purchaser, Right of.—Under the law of the Mitakshara each son upon his birth takes a share equal to that of his father in ancestral immovable estate, and can compel his father to make partition of such estate. The rights of the coparceners in a joint Hindu family consisting of a father and his sons do not differ from those of the coparceners in a like family consisting of undivided brethren, except in so far as the sons are affected by the obligation of the Hindu law to pay their father's debts, and by the fact that he is naturally the manager of the joint family estate. It is settled law in the Madras Presidency, that one coparcener may dispose of ancestral undivided estate to the extent of his own share, even by private conveyance, whether for value or by gift. In the Bombay Presidency, unauthorised alienations, voluntarily made by one coparcener, are good, even for his own share, only when made for value. In Bengal, the law which prevails in the other Presidencies as to alienation by private deed has not yet been adopted, but it is now settled, that the purchaser of undivided property, sold in execution of a decree during the life of the debtor for his separate debt, acquires the debtor's interest in such property, with the power of ascertaining and realising it by partition. Under the Hindu law, subject to certain limited exceptions, the whole of the undivided estate of a joint family is liable in the hands of sons for the debts of their father. Accordingly, where ancestral property has passed out of the family, either under a conveyance executed by the father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were of a kind for which they would not have been liable, and that the purchasers had notice to that effect; and a purchaser at an execution-sale, being a stranger to the suit without such notice, is not bound to make enquiry beyond what appears on the surface of the proceedings. In a suit by the members of an undivided Hindu family governed by the law of the Mitakshara, to set aside a sale of joint ancestral property which had been sold in execution of a decree obtained against their deceased father, on the ground that the debt was not one for which such property could be made liable, it appeared that, prior to the sale, the plaintiffs had

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

preferred a claim of objection thereto on the same grounds, and that the Court of execution had declined to adjudicate the claim, and had directed the sale to proceed, referring the claimants to a regular suit. *Held* that the purchasers at the execution-sale must be taken to have had notice, actual or constructive, of the objections made to the sale by the plaintiffs, and of the order passed thereon by the Court, and to have purchased with knowledge of the plaintiffs' claim, and subject to the result of their suit. *Held*, also, that the property having been attached for the debt of a co-sharer during his lifetime, the sale was good for his share, but that, as it appeared on the evidence in the suit that the debt was one for which, according to Hindu law, the other co-sharers could not be made liable, the sale was not good for their shares. *SURAJ BUNSI KOER v. SHEO PERSAD SINGH*

I. L. R., 5 Cal., 149

[4 C. L. R., 226

L. R., 6 I. A., 88

41. ——— Alienation of joint undivided family property by father.—Rights of sons.—Z., a member of a joint Hindu family consisting of himself and his sons, in January 1869, in order to raise money to pay off family debts and for family necessities, conveyed a two-anna share out of an eight-anna share of a village belonging to the family to B., who sued him on such conveyance for possession of the two-anna share, and obtained a decree and possession of such share. In June 1879 the sons and the grandson of Z. sued B. to recover such share. *Held*, with reference to the ruling of the Privy Council in *Suraj Bunsri Koer v. Sheo Persad Singh*, I. L. R., 5 Cal., 149, that the suit was not maintainable. *DARSU PANDAY v. BIKARMAJIT LAL*

I. L. R., 3 All., 125

42. ——— Minor sons.—Adult sons.—Necessity for alienation.—A., the father and managing member of a Hindu family subject to Mitakshara law, executed bonds mortgaging a portion of the ancestral estate to the father of the defendants. At the date of the mortgages A. had living a wife and two sons, one of whom was alleged to be an adult, and the other a minor. The mortgagees instituted suits on the bonds, making A. only a defendant, and in execution of decrees obtained by him in those suits, four portions of ancestral property were attached and sold by the Court, the sale-certificates being of the right, title, and interest of the judgment-debtor, and were purchased by the mortgagee, who got possession of the whole sixteen annas of the four portions of ancestral estate sold. In a suit by the widow and the two sons of A. to recover their shares in the property from the representatives of the mortgagee,—*Held* that as A. alone executed the mortgages, and was alone made a defendant in the suits on the bond, the sale in execution as against the minor could pass the entire sixteen annas of the estate only in the event of the defendants proving that sufficient necessity existed for incurring the debt; if no

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

necessity was proved, only the right, title, and interest of *A.* passed by the sale, although the loans might have been applied by him to immoral purposes, and the sons might, if properly proceeded against, have been bound to pay *A.*'s debt. As against the adult son, only the right, title, and interest of *A.* would pass unless necessity were shown. *Quere*.—Whether, even if necessity were proved, the interests of adult members of the family could be affected without their consent. Where, upon a sale under a decree obtained upon a mortgage-bond against the father of a Mitakshara family, property other than that included within the mortgage-bond is sold, such sale only passes the right, title, and interest of the father. The principles laid down in the cases of *Gridharae Lal v. Kantoo Lal*, 14 B. L. R., 187; *Suraj Bansi Koer v. Shoo Persad Singh*, I. L. R., 5 Cal., 148; and *Deendyal Lal v. Jugdeep Narain Singh*, I. L. R., 3 Cal., 198, enunciated and discussed. *PURSID NARAIN SING v. HONOOMAN SAHAY*

[I. L. R., 5 Cal., 845; 5 C. L. R., 576]

43. — Joint Hindu family.—Joint family property.—Joint family debt.—Execution of decree against father.—Rights of sons.—*R.*, a Hindu father, gave certain persons a bond in which he hypothecated the joint undivided property of his family. Such persons obtained a decree against *R.* on such bond, in the execution of which "such rights and interests only as *R.* had, as a Hindu father, in a joint undivided family" were put up for sale. *Held* that, although *R.* might have, as a Hindu father, a power of dealing with the interests of his sons, that circumstance would not make such interests his own, so as to pass them by a sale which affected his own interests only, and the auction-purchasers could be held only to have purchased his interests. *NANHAK JOTI v. JAIMANGAL CHAUBEY*

[I. L. R., 3 All., 294]

44. — Joint Hindu family.—Joint family debt.—Sale of joint family property in execution of decree.—When a member of a joint Hindu family is sued for a family debt it may be assumed that he is sued for the same as the representative of the family; and when the decree in such a suit is substantially one in respect of the family debt and against the representative of the family, such decree may properly be executed against the family property. *Held*, therefore (*STRAIGHT, J.*, dissenting), where the father of a joint Hindu family, as the representative of the family, borrowed money for family purposes, hypothecating family property for the repayment of such money, and in a suit to recover such money by the sale of such property and other family property a decree was made against him directing the sale of the hypothecated property and such other property, and such properties were sold in execution of such decree, that, having regard to these facts, it was reasonable to hold that the father was sued as the representative of the family, and such decree was made against him

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

in that capacity, and was so executed against him, and consequently his sons were not entitled to recover their legal shares of such properties from the auction-purchaser. *Bissessar Lal Sakoo v. Luchmessur Singh*, I. L. R., 6 I. A., 238, followed; *Deendyal Lal v. Jugdeep Narain Singh*, I. L. R., 3 Cal., 198, distinguished. *Per STRAIGHT, J.*—That the father alone having been a party to such suit, and the sons not having been parties thereto either personally or by a formally constituted representative, and such decree being against the father alone, the rights and interest of the sons in the family properties were not affected by the sale of such properties in execution of such decree, and the sons were entitled to recover their legal shares of such properties from the auction-purchaser. *Deendyal Lal v. Jugdeep Narain Singh*, followed. *RAM NARAIN LAL v. BHAWANI PRASAD*

[I. L. R., 3 All., 443]

45. — Joint Hindu family.—Debts contracted by father as manager of family business.—Sale of ancestral property in execution of decree against father.—Son's share.—*N.*, a member of a joint Hindu family, consisting of himself, his wife, and his minor son, *L.*, managed the joint family business, which was carried on under the style of "Atma Ram Anokhe Lal." As manager of such business he contracted certain debts, for which he was sued as the "proprietor" of the firm of "Atma Ram Anokhe Lal" and for which decrees were passed against him, in execution of which ancestral property of the family was sold. *L.*, his minor son, sued to have such sale set aside, and to recover his share of such property, on the ground that such decrees had been passed against his father personally, and only his interests in such property passed by such sale. *Held* that, looking at the capacity in which *N.* was sued, and the nature of the debts for which such decrees were given, such decrees must be taken to have been passed against *N.* as the managing head of the family, and *L.* was therefore not entitled to recover his share of such property. *PHUL CHAND v. LAOHMI CHAND*

[I. L. R., 4 All., 486]

46. — Mitakshara law.—Ancestral property.—Sale of joint family property.—Debts legally contracted by father.—Sale in execution of decree.—There is no foundation either in the Mitakshara law itself, or in any decisions passed by the Judicial Committee, for the broad proposition that in all cases under a sale in execution of a money-decree against the father in a joint family, consisting of a father and sons, whether adults or minors, nothing but the father's share passes. The result of an examination of the leading cases on the subject is, that, in each such case, the question as to what was sold in execution must be first determined (the mere circumstance that a decree was obtained against the father alone is not conclusive upon the point); and it should further be enquired whether the father was sued in his representative capacity or not, and if not so sued, then whether the sons are entitled to set

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

aside the sale *qua* their shares. The decision of the Privy Council in *Deen Dyal Lall v. Jugdeep Narain Singh*, *I. L. R.*, 3 Calo., 198, in no way conflicts with the principle laid down in the case of *Muddun Thakoor v. Kantoo Lall*, 14 B. L. R., 187. *UMBIGA PRABAD TEWARY v. RAM SAHAY LALL*
[*I. L. R.*, 8 Calo., 898; 10 C. L. R., 505

47. ——— *Ancestral property.—Father and son.—Right of father to alienate for debts.—Insolvency of father.—Vesting order.—Insolvent Act, 11 and 12 Vict., s. 7.—Death of insolvent.—Subsequent sale by Official Assignee.—Title of purchaser.—Rights of son.—*A father and son were possessed of immoveable ancestral property consisting of certain houses. The father, becoming insolvent, took the benefit of the Insolvent Act; and the usual vesting order, under section 7 of the Insolvent Act, 11 and 12 Victoria Cap. 21, was thereupon made. Shortly afterwards the father died, and, soon after his death, the Official Assignee sold the houses in question to the defendant in order to raise money to pay off the deceased insolvent's debts. The son now brought a suit to recover the whole, or a portion, of the said houses, contesting the right of the Official Assignee to convey any interest, or at least his interest in the said houses, to the purchaser. *Held* that the sale was valid, and conveyed to the purchaser the interest of the plaintiff as well as that of his deceased father. Under the Mitakshara law a father has the right to dispose of his son's interest in ancestral immoveable estate for the payment of his own debts not contracted for immoral purposes; and a vesting order, made under section 7 of the Insolvent Act, vests that right in the Official Assignee, who can, therefore, give a good and complete title to such ancestral immoveable estate to a purchaser. The death of the insolvent had no effect on the proceedings in his insolvency, or on the power of the Official Assignee. The ancestral estate previously vested in the Official Assignee was not thereby divested from him and vested in the son by right of survivorship. *Semble*,—In the event of the father's estate producing a surplus over and above the amount required to satisfy his debts, such surplus might be made available to answer the claims of the son in respect of his interest in ancestral immoveable property sold in the realisation of the father's estate. *FAKIROHAND MOTICHAND v. MOTICHAND HURRUCKCHAND* *I. L. R.*, 7 Bom., 438

48. ——— *Mithila law.*

Son's interest in ancestral estate.—Ancestral property which descends to a father under the Mithila law is not exempted from liability to pay his debts because a son is born to him. Such exemption can only be pleaded when the nature of the debts incurred by the father is such as would free the son from the usual obligation of discharging his father's debts out of the ancestral estate. A decree, properly obtained against the father, can be executed by sale of such ancestral estate and the interests of the sons as well

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

as of the father will be bound by it. A purchaser at such sale is not bound to enquire into the circumstances under which the decree was made. *GIRDHAREE LALL v. KANTOO LALL. MUDDUN THAKOOR v. KANTOO LALL* 14 B. L. R., 187
[22 W. R., 56; *I. L. R.*, 1 I. A., 321

Reversing the decision of the High Court in *KANTOO LALL v. GIRDHAREE LALL*

[9 W. R., 469

ANORAGHEE KOORER v. BHUGO BUTTY KOORER. SHAM SOONDER KOORER v. JUMNA KOORER

[25 W. R., 148

RAM SAHAY SINGH v. MOHABBER PRESHAD. KESHO LALL v. MOHABBER PRESHAD

[25 W. R., 185

MUNRASI KOORER v. NOWRUTTUN KOORER

[8 C. L. R., 423

49. ——— *Son's interest in the ancestral estate.*—The interest which a son by birth acquires in the ancestral estate of his father under the Mitakshara law, does not entitle him to claim exemption from all debts contracted by the father subsequent to his birth. Such exemption can only be claimed when the debts are of an illegal nature, or have been contracted for immoral purposes. An alienation made by the father by way of mortgage or sale for the discharge of a debt for which the property would be ultimately liable, falls within the meaning of the unavoidable transactions spoken of in paragraphs 28 and 29, section 1, chapter I of the Mitakshara. *MUDDUN GOPAL LALL v. GOWRUBUTTY. GIRDHARI LALL SAHOO v. GOWRUBUTTY. POOSUN LALL SAHOO v. GOWRUBUTTY*
[15 B. L. R., 264; 23 W. R., 365

50. ——— *Suit on promissory note given by father for family purposes.*—*Per INNES, J.—Semble*,—A suit on a promissory note made by a Hindu father would lie against sons joined in the suit with the father as defendants on an allegation that the debt was incurred for proper family purposes. *RAMASAMI MUDALIAR v. SELLATAMMAL* *I. L. R.*, 4 Mad., 375

51. ——— *Nature of debts.*—In a suit to set aside a sale of ancestral property in which it was contended, *firstly*, that the debt in satisfaction of which the sale had taken place, was contracted for an immoral purpose; *secondly*, that a debt might be immoral either in respect of the object for which it was contracted, or in respect of the means by which the money was obtained; and, *thirdly*, that in any case the judgment-debtor could only sell his own half-interest, and not the half-interest which his son had in the property,—*Held* that, as the debt represented liabilities which the judgment-debtor had incurred in making *bond fide* for his employer a contract which that employer had repudiated, it was properly binding on his son; and that the son's inchoate interest in the property, which would ripen

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

on the father's death, was not a separate half-interest in the estate, the father's whole interest in which had passed in the sale. *WAJID HOSSEIN v. NANKOO SINGH* **25 W. R., 311**

52. ————— *Right of son to set aside alienation.—Immorality.*—Following a ruling of the Privy Council, *Girdharae Lall v. Kantoo Lall*, 14 B. L. R., 187, it was held that a bond *vide* purchaser, for valuable consideration, of ancestral property sold in execution of a decree, is not bound to go further back than to see that there was a decree and that the property was liable to satisfy the decree. Where this is done, the heirs of the deceased judgment-debtor are not entitled to come in and set aside the proceedings and recover the property. A son's freedom from obligation to discharge his father's debt, has respect to the nature of the debt and not to the nature of the property whether ancestral or acquired. If the debt of the father had been contracted for any immoral purpose, the son might not be under any pious obligation to pay it. Attending nautches, and occasionally giving nautches at one's own expense, cannot be considered immorality absolving from such obligation. *BUDDH LALL v. KANTER LALL*

[**23 W. R., 260**

53. ————— *Mitakshara law.*—*Son's interest in ancestral estate.—Burden of proof.*—In a suit by a son to set aside an alienation of property made by his father during the son's minority, it was shown that the property in suit originally belonged to the plaintiff's grandfather, who came to a partition of his property with his brother; and that, on the death of the plaintiff's grandfather, his two sons, the father and uncle of the plaintiff, divided the estate between them, the property in suit falling to the share of the plaintiff's father. It was sought to set aside the alienation on the ground that there was no legal necessity for effecting it. The suit was brought seven or eight years after the plaintiff attained his majority. *Held* that, notwithstanding the partition by the plaintiff's father, the property was ancestral property in which the plaintiff at his birth acquired an interest. *Held* also, reversing the decision of the Courts below, that the question to be tried in the suit was, according to the decision of the Privy Council in *Girdharae Lall v. Kantoo Lall*, 14 B. L. R., 187, not whether there was any legal necessity for the alienation, but whether the debt of the father, in satisfaction of which the alienation was made, was incurred for an immoral purpose, and that, under the circumstances, the onus was on the plaintiff to show that it was. *Quere*,—Is a son bound to discharge debts of the father which are illegal, though not immoral? *ADURMONI DEVI v. CROWDHEY SIB NARAIN KUE* **I. L. R., 3 Cal., 1**

54. ————— *Sale in execution of personal decrees, of decrees to enforce mortgage against father.—Son's right to set aside sale.*—*E.*, the father of an undivided Hindu family, borrowed Rs 700 from *P.* in 1867, and executed a mortgage

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

bond hypothecating family property to secure the debt. In suit No. 198 of 1876 *P.* recovered judgment against *E.* for Rs 1,229 and costs, and the lands mortgaged were declared by the decree to be liable for the debt. In 1876 the plaintiff, one of *E.*'s sons, brought a partition suit (No. 622) against his father to obtain his share of the family property. *P.* intervened and was made a party. [In 1877 *P.* took out execution of his decree, and the mortgaged property was brought to sale and purchased by *P.* for Rs 1,200, and a sale certificate was issued under section 259 of Act VIII of 1859, declaring the sale of the right, title, and interest of the judgment-debtor in the property mentioned therein confirmed. In suit No. 622 it was not alleged by the plaintiff that the debt was contracted by his father for purposes which would excuse a son from his obligation to pay it, but the amount which remained due on the bond of 1867 was disputed and not determined by the Munsif, who held that *P.* only acquired by his purchase the father's share in the land under the authority of *Deendyal Lall's* case, *I. L. R., 8 Cal., 198*, or by the Subordinate Judge, who held, on the authority of *Girdharae Lall's* case, 14 B. L. R., 187, that the plaintiff's claim against *P.* was invalid, considering the decree against the father sufficient evidence of the debt. *E.* also borrowed Rs 450 from *A.*, and in 1872 executed a mortgage bond hypothecating other family lands to him as security. In 1876 *A.* brought a suit (No. 85) against *E.* to recover the amount due on the bond from *E.* personally and by sale of the mortgaged land, and in 1877 the mortgaged lands were sold in execution of the decree and a certificate issued, in the same form as in *P.'s* suit, to *A.* *A.* also intervened in the partition suit and was made a party. The amount due by *E.* to *A.* secured by the mortgage was not disputed, nor was it alleged that the debt was contracted for immoral purposes. The lower Courts decided the plaintiff's claim against *A.* in the same way as his claim against *P.* *Held* (INNES and MUTTUSAMI AYYAR, JJ., dissenting) that the decision of the Privy Council in the case of *Girdharae Lall v. Kantoo Lall*, 14 B. L. R., 187, is binding on and must be followed by the Courts in this Presidency, and that the liability of a son to discharge his father's debts is commensurate with the whole interest the son takes in the ancestral as well as in the self-acquired property of his father. *Held* also, that it was necessary to determine whether the amount alleged by *P.* remained due on the bond of 1876, because, if it was established by the plaintiff that the debt was substantially less than it was asserted to be, the plaintiff might have a claim to equitable relief inasmuch as the decree-holder brought the land to sale after the institution of the partition suit. *Held*, lastly, that if the sale to *A.* was made in execution of so much of the decree as was purely personal, the plaintiff's claim was properly dismissed as against *A.*, but if the sale was made in execution of the order for the enforcement of the mortgage it could not bind the plaintiff, inasmuch as it was the

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

duty of the mortgagee to make plaintiff a party to suit No. 35, and afford him an opportunity of redemption, but that, if the sale was set aside, the plaintiff could not claim to be placed in a better position than he would have occupied had the sale not taken place, and that, as his interest was bound by the mortgage, he would hold that interest subject to a proportionate part of the mortgage debt. *Per TURNER, C. J.*—The obligation under the ancient Hindu law of the son and grandson to discharge the debt of the father and grandfather has been preserved, while the power of the father to deal with ancestral immovable property has been curtailed. A personal obligation arising from the filial relation and independent of assets exists as well as an obligation attaching to the heritage in the hands of lineal descendants of the debtor. The question as to the extent of the son's liability is not one of contract, but the duty is an incident of inheritance. Assets available for the payment of a father's debts mean and include the whole estate in which the son by birth acquired rights. The validity of an alienation to a purchaser for consideration in Bombay, as in Madras, did not originate in any local usage, but in an exceptional doctrine established by modern jurisprudence. The duty of the son is incidental to the heritage and subsists from the inception of the son's interest therein. As a father can make a valid alienation of ancestral property so as to bind the son's interest, the law will execute the father's power for the benefit of creditors. There are substantial differences between a sale in execution for a money decree and a sale under a decree ordering a sale to enforce a mortgage. In the former case the Court proposes to sell whatever interest in the property would, under any circumstances, be available to creditors at the date of the attachment; in the latter case, whatever interest the mortgagor was, under any circumstances, competent to create and intended to create at the time of the mortgage. Although a son's interest may pass by a sale in execution of a decree in a suit to which he was no party, yet the son is not concluded by the decree. It is competent to him to contest the sale in subsequent proceedings on any grounds which had been a party he might have advanced to protect his interest. *Per INNES, J.*—The question of the extent of the liability of the son is a question of contract and not a question of succession and to be determined not by Hindu law but by the Statute law or the law of equity and good conscience. Since 1837, the decisions in Madras have determined that the liability of the son exists only to the extent he may have taken assets. According to the Mitakshara the son has property by birth in the estate of his grandfather, and since 1813 the right to alienate his share without the consent of his coparceners has been established. The father cannot leave assets in the property of his son. The share of the father in ancestral estate does not accrue to the son by survivorship instead of becoming available as assets because of the rule of Hindu law which requires the taker of wealth, whether

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

by survivorship or inheritance, to discharge the debts. The decision in *Girdharee Lall's* case cannot alter the law as to rights in property so as to make the son's interest the father's estate. Until the decision in *Girdharee Lall's* case, the son's freedom from liability to pay the father's personal debt in the father's lifetime was universally supposed to exist, and that decision ought not to be followed in the Madras Presidency so far as it lays upon the son the duty of discharging his father's debt in his lifetime, or so far as it limits the son's right to question charges made by the father upon the family property to the case of debts immorally contracted. The rules laid down in *Saravana Tevan v. Muttayi Ammal*, 6 *Mad.*, 871, should be followed, and when a decree is against the father for his separate debts, the purchaser of ancestral property under the decree takes at most only the share or interest to which the father was entitled at the date at which the charge was created. *Per MUTTUSAMI AYYAR, J.*—The power of a Hindu father to sell ancestral lands is limited. The rights of coparceners in an undivided Hindu family governed by the Mitakshara which consists of a father and sons do not differ from those of coparceners in a family which consists of undivided brothers, except so far as they are affected by the peculiar obligation which the Hindu law imposes on sons of paying their father's debts. The son's duty to pay his father's debts is, according to the ancient texts, a legal obligation, because it was enforced compulsorily by Hindu kings through their Judges, who exercised an ecclesiastical as well as a secular jurisdiction. Since 1837 in this Presidency it has been considered that, when no assets were inherited, the question of the son's liability for the father's debts was one of contract and governed, under Madras Regulation III of 1802, not by Hindu law, but by the rule of equity and good conscience. There is no case decided in the Madras Presidency before *Girdharee Lall's* case in which the son's obligation was not treated as a mere moral duty. But, granting that the judgment may be enforced as a legal obligation, it would be a good defence under the ancient Hindu law for the son to plead that the obligation could not arise in his father's lifetime to pay a debt contracted by the father for his own purposes. The decision in *Girdharee Lall's* case ought not to be followed in this Presidency; (1), because of the peculiar view which has prevailed, as to the nature of the pious obligation, for more than forty years; (2) because of the doctrine of alienability of undivided interest which has been generally recognised as a matter of equity for more than sixty years, and as a matter of right for upwards of twenty years; (3) because the son's right of interdiction and power to defraud creditors, provided by the Mitakshara, have been taken away by recognising that an undivided interest is on the footing of the coparcener's separate property for the purpose of satisfying his obligations; (4) because it is desirable to wait for an authoritative ruling by the Privy Council in a

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

Madras case before unsettling the law. In the procedure followed in suits brought against a Hindu father by his creditors, there is nothing special to warrant a fictitious extension of the parties. There is no legal basis for any distinction between a decree in which there is a direction for the sale of mortgaged property and a simple money decree. The interest that passes by a Court sale must be determined with reference to the decree that led to it, and cannot be determined by a future inquiry as to the character of the debt. The son's interest does not pass by reason of the direction for the sale of the mortgaged property. *Per KERNAN, J.*—A sale or mortgage by a father alone of ancestral property, after the birth of a son, for the purpose of raising money, not for family necessity or benefit, but to pay a debt incurred by the father, not for immoral consideration, binds the son and his interest at birth, and from this it necessarily follows that the obligation of the son arises and may be made effectual against the son in the lifetime of the father. *Per KINDERSLEY, J.*—The obligation of the son to pay his father's debt is a part of the law of inheritance, not of contract. According to the true doctrine of the Hindu law the obligation of the son to pay his father's debt does not arise until the father's death. It is the duty of the father to pay his own separate debts, but the decision in *Girdharee Lall's case* goes further and rules that even in the undivided father's lifetime, when there has been a decree against the father for debts which were neither immoral nor illegal, and ancestral immovable property has been sold in execution of such decree or under pressure of such execution, the son cannot recover against a *bond fide* purchaser for value. The decision in *Girdharee Lall v. Kantoo Lall* should not be carried beyond the circumstances upon which the decision was passed. *PONNAPPA PILLAI v. PAPPUWAYYANGAR*

[I. L. R., 4 Mad., 1]

55. ——— *Alienation for family purposes.—Sale in execution of decrees against father.—Suit by son to set aside sale.*—When a mortgage debt has been contracted for family purposes by the father, and a decree passed against him and family property sold in satisfaction of the decree, the son cannot sue for his share of the property sold on the ground that he was no party to the suit. The ruling in *Girdharee Lall v. Kantoo Lall*, 14 B. L. R., 187, affirmed in *Saraj Bunsai Koer v. Sheo Prasad Singh*, I. L. R., 5 Cal., 148, must be followed in accordance with the decision in the Full Bench ruling in *Ponnappa Pillai v. Pappuwayyengar*, I. L. R., 4 Mad., 1. *SUNDARAJA AYYANGAR v. JAGANADA PILLAI*

[I. L. R., 4 Mad., 111]

56. ——— *Sale in execution of decrees against father.—Right of sons to set aside sale.*—*Per curiam* (INNES and MUTTUSAMI AYYAR, JJ., dissenting).—In the Madras Presidency, where ancestral property has been bought at a sale

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

in execution of a decree against the father of a Hindu family, the purchaser is not bound to go further back than to see that there was a decree against the father and that the property was properly liable to satisfy the decree if the decree had been properly given against the father. A *bond fide* purchaser for valuable consideration of an estate purchased in execution of a decree against the father under such circumstances is protected against the suit of the sons seeking to set aside all that has been done under the decree and execution, and to recover back the estate as part of ancestral property. *Girdharee Lall v. Kantoo Lall*, 14 B. L. R., 187, followed. *SIVASANKARA MUDALI v. PARVATI ANNI*

[I. L. R., 4 Mad., 96]

57. ——— *Sale of family property by father.—Right of son to set aside sale.*—In the Madras Presidency a sale of ancestral land by an undivided Hindu father to procure funds for the satisfaction of debts incurred by himself must be sustained as against the sons on the authority of the decision of the Judicial Committee of the Privy Council in *Girdharee Lall v. Kantoo Lall*, 14 B. L. R., 187; but when the sale is also disputed by a (minor) coparcener, not a son but a nephew (the sale-deed having been executed by his uncle and his mother as *de facto* guardians), the ruling in *Girdharee Lall's case* is not applicable, and the purchaser must show, in addition to the fact that the debts existed at the time of the sale, that the debts were such as it was incumbent on the minor to discharge. *GANGULU v. ANCHA BAPULU*

I. L. R., 4 Mad., 73

58. ——— *Alienation for family purposes.—Sale in execution of decrees against father.—Right of son to have sale set aside.*—Where a judgment-creditor of a Hindu father has purchased the right, title, and interest of the judgment-debtor in family land at a Court-sale in execution of his decree, and been put in possession of the whole of the land, the son of the judgment-debtor cannot recover his share of the land in a subsequent suit unless he can show that the debt of his father, for which the property was sold, was illegal or immoral. *GOPALASAMI PILLAI v. CHOKALINGAM PILLAI*

[I. L. R., 4 Mad., 320]

59. ——— *Sale of family property in execution of decrees.—Per MUTTUSAMI AYYAR, J.*—The decision in *Girdharee Lall v. Kantoo Lall*, L. R., 1 I. A., 321, does not declare that a Court is to sell the son's property in satisfaction of a decree against the father during the father's life. *GURUSAMI CHETTI v. SAMURTA CHINNA MANAKAR CHETTI*. *GURUSAMI CHETTI v. SADASIVA CHETTI*

I. L. R., 5 Mad., 37

60. ——— *Right of son to set aside sale in execution of decrees against father.*—The result of the Full Bench decisions in *Ponnappa Pillai v. Pappuwayyengar*, I. L. R., 4 Mad., 1, and in *Gangulu v. Ancha Bapulu*, I. L. R., 4 Mad.,

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

78, is that where there has been a decree against an undivided Hindu father for debt, and the right, title, and interest of the father in ancestral property has been sold under the decree, and the purchaser has been placed in possession of the entire mass of the property advertised for sale, instead of the mere interest of the judgment-debtor in the property, which was all that was advertised to be sold, a son, desiring to obtain his share of the property (which by an error of execution has thus got into the possession of the purchaser), cannot avail himself of the decision of the Judicial Committee in *Deendyal Lall v. Judeep Narain Singh*, 1 I. L. R., 3 Cal., 198, and is not entitled to recover his share unless he can show that the debt for which a decree was obtained against his father alone was an illegal or immoral debt. *VELLIYAMMAL v. KATHA CHETTI*

[I. L. R., 5 Mad., 61]

BHEE PERSAD v. DOORGA PERSAD

[W. R., 1884, 310]

61. — *Decree for partition and means profits against father.—Son's liability, Suit to declare.*—T., a member of an undivided Hindu family, sued K., the manager, to obtain his share of the family estate without making the sons of K. parties to the suit. K. offered to abide by the oath of T., and a decree was passed in T.'s favour declaring him entitled to a one-sixth share of the land, jewels, and money, and to means profits and interest. In execution of this decree, T. attached lands belonging to K. and his sons who had remained in union. The attachment was raised on the intervention of the sons of K.: *Held*, in a suit to declare the shares of the sons of K. liable for the decree against K., that the rule in *Girdhars Lall v. Kantoo Lall*, 14 B. L. R., 187; 8 C. L. R., 1 I. A., 321, was not applicable and that the suit would not lie. *TIMMAPEYIA v. LAKSHMINARAYANA* . I. L. R., 6 Mad., 284

62. — *Mortgage by father.—Son's rights.—Burden of proof.*—In a suit by a Hindu against his two brothers to recover his one-third share of the family estate, a mortgagee, who was in possession of a portion of the estate under a mortgage executed by the deceased father of the family was made a party to the suit. It was not proved that the mortgage debt was incurred for the benefit of the family, nor was it proved that it was incurred for immoral or illegal purposes by the father. *Held* that the mortgage was only binding on the father's one-fourth share, and that the plaintiff was entitled to recover one-fourth of the property mortgaged from the mortgagee. *YENAMANDRA SITARAM ASAMI v. MIDATANA SANTASI* . I. L. R., 6 Mad., 400

63. — *Burden of proof.*—Where the holder of a decree against the father of an undivided Hindu family, obtained upon a bond whereby certain land was hypothecated as security for a debt, attached the land hypothecated and other land belonging to the family, and the attach-

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

ment was raised on the intervention of the sons of the defendant to the extent of their shares in the land, and the decree-holder then brought a suit to have it declared that the shares of the sons were liable to be sold for the father's debt. *Held* that the decree-holder having failed to prove that the debt for which he had attached the family property was incurred for the benefit of the family, the suit must be dismissed. *ARUNACHALA v. MUNISAMI*

[I. L. R., 7 Mad., 39]

64. — *Debt properly contracted.—Usurious rate of interest.—Purchaser at execution sale of joint family property.*—In a suit by a Hindu subject to the Mitakshara law, against certain auction-purchasers at a sale in execution of a decree against the father, to recover a portion of the ancestral estate by cancellation of the sale, it appeared that the property which was mortgaged by the bond upon which the decree was passed was not put up for sale. The decree provided "that the plaintiff recover the amount with costs and interest, and that the decree be executed against the property specified in the bond," and it also allowed interest at about 50 per cent., the rate in the bond, to the decree-holders. It was contended on behalf of the plaintiff that, upon a proper construction of the Privy Council ruling in *Muddun Thakoor v. Kantoo Lall*, 14 B. L. R., 187, the decree under which the property had been sold was an improper one. *Held* that, under the Privy Council ruling, the purchaser is not bound to look beyond the decree. *Held* also, that an usurious rate of interest cannot be treated, within the principles of the above case, as showing that the decree was for a debt which the son was not bound to discharge. *LUCHMI DAI KOORI v. ASMAN SING*

[I. L. R., 3 Cal., 213; 25 W. R., 421]

65. — *Son's interest in ancestral property.—Mortgage by father during minority of sons.*—A Hindu, subject to the Mitakshara law, and forming with his sons a joint Hindu family, mortgaged certain ancestral immovable property during the minority of his sons. In a suit by the mortgagee against the father and sons to recover the mortgage debt "by sale of the mortgaged property, and out of other properties, as well as from the person" of the father, *Held*, that it was incumbent upon the plaintiff to show for what purpose the loan was contracted, and that that purpose was one which justified the father in charging, or which the plaintiff had at least good grounds for believing did justify the father in charging, the sons' interests in the ancestral immovable property. *BHEENARAIN SINGH v. JANUK SINGH*

[I. L. R., 3 Cal., 438]

66. — *Alienation by father to pay off antecedent debt.*—An alienation of joint family property made by a father under the Mitakshara law for the purpose of paying off an antecedent debt, is binding upon the sons, unless they show

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

that the debt was contracted for immoral purposes. The case of *Bhakarain Singh v. Januk Singh*, *I. L. R.*, 2 Calc., 438, being opposed to the decision of the Privy Council in the case of *Girdhars Lall v. Kantoo Lall*, *L. R.*, 1 I. A., 321, as explained by that of *Ram Sahai v. Shoo Prasad Singh*, *I. L. R.*, 5 Calc., 148, and *L. R.*, 6 I. A., 88, cannot now be followed. **GUNGA PRASAD v. SHRODYAL SINGH**

[5 C. L. R., 224]

67. — The manager of a joint Mitakshara family (the family consisting of the father and minor son) raised money on the mortgage of certain family property, it not being proved, on the one hand, that there was legal necessity for raising the money, nor on the other hand, that the money was raised or expended for improper purposes, or that the lender made any enquiry as to the purpose for which the money was required. *Held* that, under such circumstances, a mortgagee could not enforce, by suit against the father and son, the mortgage itself during the father's lifetime, but the debt being an antecedent one, he would simply be entitled to a decree directing the debt to be raised out of the whole ancestral estate, including the mortgaged property. He would, assuming the minor to be the only son, also be entitled to a similar decree against the son after the father's death. Supposing the mortgagee, under the above circumstances, to have obtained a decree against the father alone for payment and sale of the property, and at the sale to have himself become the purchaser, he could not be considered a *bond fide* purchaser for value, and would not be entitled to the property as against the infant son, except to the extent of the father's interest therein. A mortgagee, under the same circumstances (but supposing the son to have attained majority at the time of the loan, and to have been made a party to the suit) would be entitled to a decree directing the debt to be raised out of the whole ancestral estate. In the case of a joint Mitakshara family consisting of two brothers and their two minor sons, the former, being the managers, raised money by executing a *zurpeshgi* lease of specific family property, the lender making no enquiry as to the necessity for the loan; subsequently such managers took a sub-lease of the same property from the *zurpeshgidar*, and continued in possession, and the *zurpeshgidar* sued for rent and obtained a decree, and in execution became the purchaser and obtained possession. It was found as a fact that the *zurpeshgi* and the sub-lease were merely a device by the managers to raise money and to continue in possession of the property, but it was not shown for what purpose the money was raised. *Held*, the minor sons not having been made parties to the suit by the *zurpeshgidar*, would be entitled to recover their shares as against the purchaser. **LUCHMUN DASS v. GIRIDHUR CHOWDHRY**

[I. L. R., 5 Calc., 855 : 6 C. L. R., 473]

68. — Mitakshara law.

—Under Mitakshara law, according to the rulings of the Judicial Committee, the payment, even in the

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

father's lifetime, of an antecedent debt due by him, is a pious duty on the part of the son, and its discharge is, therefore, such a necessary purpose as to give validity to a sale or mortgage by the father as against his minor sons. Such antecedent debt means a debt antecedent to the transaction,—*viz.*, the sale or mortgage purporting to deal with the property. In a suit upon a mortgage by the father alone, where the sons are made parties, the decree would be good as against the sons, even though they may have been adult when the debt (assuming it was not for immoral purposes) was incurred, and the whole property would be bound, notwithstanding verse 29, chapter I, section i, and verse 10, chapter I, section vi of the Mitakshara. In respect of ancestral property the son is equally liable for his father's debts, if not incurred for immoral purposes, as for his own debts. The interest of an adult son, however, could not, ordinarily, be affected by a decree against the father alone. Where, however, an adult son, although neither an executant of the bond on which the suit was brought, nor a party to such suit, yet was shown to be himself liable for a large proportion of the antecedent debt due on the bond, and by his conduct had made it apparent that he approved of and fully acquiesced in the sale of the whole ancestral property, and moreover, that he allowed the mortgagee to take and remain in possession for upwards of eleven years and to go to expense in paying off encumbrances on the estate,—it was, in a suit by the son to recover his share of such ancestral property, held, that he was not entitled to succeed. Under the circumstances the son ought to have been made a party to the suit brought by the mortgagee. The principles laid down by the Privy Council, and in the Full Bench case of *Luchmun Dass v. Giridhur Chowdhry*, *I. L. R.*, 5 Calc., 855, by the High Court, discussed. **LALJEE SAHOY v. FAKHER CHAND**

[I. L. R., 6 Calc., 135 : 7 C. L. R., 97]

69. — Mitakshara law.

—*Mortgage of ancestral estate by father for family purposes.—Attachment of property in execution of decree.—Death of judgment-debtor prior to sale.*—Where a decree on a mortgage was obtained against the father of a joint Hindu family governed by the Mitakshara law, the debt having been incurred for joint family purposes, and in execution thereof the joint family property was attached, but prior to sale the judgment-debtor died; in a suit subsequently brought by the other members of the joint family, praying for a partition of their shares, and for a declaration that such shares were not liable to be sold in execution of the mortgage decree,—*Held* that there could not be a partition as between a person already dead and his sons, and that the whole of the ancestral property was liable for the mortgage-debt, the only declaration to which the plaintiffs could be entitled being, that they were not liable to pay the debt. **GOBURDHUN LALL v. SINGESSUR DUTT KORE**

[I. L. R., 7 Calc., 52 : 8 C. L. R., 277]

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.****70. ————— Mitakshara law.**

—*Ancestral property.—Right of mortgagees to sell.*

—A Hindu, governed by the Mitakshara law, mortgaged certain property to the plaintiffs. In a suit to recover the money due under the mortgage, and for a sale of the property, brought against the mortgagor, his four sons, and the purchaser of the mortgagor's right and interest at an execution sale, the lower Court gave the plaintiffs a decree against the mortgagor alone, holding that no necessity for the loan had been proved; but did not decide whether the property was the self-acquired property of the mortgagor or ancestral property. The High Court remanded the case for the trial of an issue upon this point. The lower Court found that the property was ancestral, and affirmed the original decree. *Held* that, assuming the property in dispute was ancestral, and that the mortgage was not valid against the sons, the plaintiffs were still entitled to recover the debt by the sale of the property of the father and the sons, because, supposing that the debt was contracted for personal purposes of the father, still the ancestral property in the hands of the sons was liable for the debt, it being not proved to have been contracted for immoral purposes. *Luohmna Dass v. Giridhar Chowdhry*, I. L. R., 5 Cal., 855, followed. *GUNGA PRASAD v. AJUDHYA PRASHAD SINGH*. I. L. R., 8 Cal., 131 [9 C. L. R., 417]

71. ————— Sale or mortgage

of joint family property.—Suit by son to recover possession of share.—Limitation.—Parties.—Right of purchaser at execution sale.

—A suit by a Hindu governed by the Mitakshara law, to recover possession of property sold during his minority by his father, is within time if brought within three years after he attains the age of twenty-one. A father governed by the Mitakshara law may alienate the family property to discharge debts incurred by him for purposes not illegal or immoral. If the son seeks to set aside such alienation as to his own interest, he will have to show that the purposes of the alienation were illegal or immoral. If the son, being adult, has joined in the conveyance, or led the alienee by his conduct to suppose that he assented to the alienation, he will be estopped from disputing its validity. These propositions apply to a mortgage, so as to place the purchaser at an execution sale under a decree upon a mortgage-bond in the position of an alienee by private sale. If the son has been a party to the suit in which the decree upon the mortgage-bond was obtained, he is concluded; but if he has not been a party to the suit, he is not concluded, but must show that the original debt was contracted for illegal or immoral purposes, in order to recover his share of the property from the purchaser. Where the father has neither aliened nor mortgaged the family property, but it is sought by suit to make that property liable to satisfy a debt incurred by the father, the son, as well as the father, must be a party to the suit. When the creditor sues the father alone for a debt contracted by him alone, and in execution sells the right, title, and

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

interest of the father only, the purchaser at this sale does not take the son's interest. *RAMPHUL SINGH v. DEGNARAIN SINGH*

[I. L. R., 8 Cal., 517; 10 C. L. R., 499]

72. ————— Joint family.—

Sale in execution of money-decree against father of Mitakshara family.

—The mere fact of a decree being passed against the father only of a joint family governed by the Mitakshara law will not lead necessarily to the conclusion that what was sold in execution of that decree is only the father's interest in the joint family property. Notwithstanding the decree being against the father only under certain circumstances, there may be a valid sale of a joint property belonging to the family in execution thereof. In execution of two money-decrees against A. alone, the right, title, and interest of A. in certain joint family property was sold, and the entire share of the joint family was taken possession of by the auction-purchasers. In a suit by the minor son and the wife of A., who with A. constituted a joint family governed by the Mitakshara law, to recover possession of their shares in the property sold,—*Held* that, although the plaintiffs were not parties to the decrees in execution of which the sales took place, the mere fact of A. being sued alone was not sufficient to justify the finding that only his right, title, and interest passed under the sales; and that as the facts of the case showed that the decrees were passed with reference to transactions which clearly concerned the joint family, the whole of the share of the joint family in the properties sold passed to the auction-purchaser; the plaintiffs having failed to show that the debts, which were the foundation of the decrees in execution of which the sales were held, were contracted for immoral purposes. *Umbida Prasad Tewary v. Ram Sakay Lal*, I. L. R., 8 Cal., 898; and *Ponnappa Pillai v. Pappayyengar*, I. L. R., 4 Mad., 1, followed. *Ramphul Singh v. Deg Narain Singh*, I. L. R., 8 Cal., 517, dissented from. *SHRO PRASHAD v. JUNG BAHADOOR*

[I. L. R., 9 Cal., 389; 12 C. L. R., 494]

73. ————— Mitakshara law.

—*Decree against the father of a joint family for lawful debts.—Sale of the whole joint estate in execution of decree against one co-sharer.*

—A, a judgment-creditor, having obtained a decree against B., the father of a joint Hindu family governed by the Mitakshara law, in a suit to which the sons of B. were not parties, but in which it was proved that the debt had been incurred for lawful purposes, proceeded to execute his decree by attaching and selling the joint family property. Thereupon the sons came in and objected to their interest in the property being sold in execution of a decree in a suit to which they were not parties, and, on their objection being disallowed, filed a suit against A. and B. to have it declared that their interest in the property was not liable to be sold to satisfy the decree. *Held* that the debt in respect of which the decree had been passed having been contracted for lawful purposes, the judgment-creditor

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

was entitled to execute his decree against the whole of the joint family property. *Held*, also, that the ruling in the case of *Deendyal Lal v. Jugdeep Narain Singh*, *I. L. R.*, 8 Cal., 198, had no application to the facts of this case. **RAMDUT SINGH v. MAHENDER PRASAD** . *I. L. R.*, 9 Cal., 452 [12 C. L. R., 47]

74. *Sale by one of several co-sharers in a joint estate.—How far alienation by father of joint family property is binding on sons.—Antecedent debts.*—Although no member of a joint Hindu family governed by the Mitakshara or Mithila law has authority, without the consent of his co-sharers, to sell or mortgage even his own share in order to raise money on his own account, and not for the benefit of the joint family, yet if a father does alienate even the whole joint property of himself and his sons, in order to pay off antecedent personal debts, the sons cannot avoid such alienation, unless they prove that the debts were immoral. But to make the alienation to this extent binding upon the sons who did not consent to it, it must be shown that it was made for the payment of antecedent debts, and not merely in consideration of a loan or of a payment made to the father on the occasion of his making the alienation. In the case of a voluntary sale, the purchase-money does not constitute an antecedent debt such as to render that sale binding on the sons, unless they prove the transaction to have been immoral. **HANUMAN KAMAT v. DOWLAT MUNDAR**

[*I. L. R.*, 10 Cal., 528]

75. *Right of father to alienate.—Suit by sons to set aside alienation.*—A Hindu governed by Mitakshara law devised an 8 annas 11½ gundas share of his ancestral estate to his son A., and the remainder to another son, A., subsequently becoming much involved, borrowed Rs45,000 on a usufructuary mortgage by two deeds in favour of C. and D., respectively, the transaction being one and the same, and the money borrowed being to pay off antecedent debts. The mortgagees having been ejected brought a suit to recover possession with mesne profits, and obtained a decree against A., in execution of which "the 8 annas 11½ gundas share of the judgment-debtor" was attached and sold, and purchased by the defendant, who was put in possession of the entire property. The sons of A., who were minors, living with him, through their mother and guardian brought a suit to have the sale set aside on the ground that, under the sale to the defendant, only the interest of their father passed. No objection had been made by the guardian of the plaintiffs to the defendant taking possession of the entire estate. *Held* that the sons were not entitled to ask that the sale should be set aside. Where property acquired by a grandfather governed by the Mitakshara law is distributed among his sons, it does not become the self-acquired property of the sons so as to enable them to dispose of it without the consent of the grandsons. **Muddan Gopal Thakoor v. Ram Buxh Pandey**, 6 W. R., 71, followed. **HARDAI NARAIN v. HARBUK DHARI SINGH** [12 C. L. R., 104]

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

76. *Mitakshara.—Suit by sons to set aside alienation by father.—Necessity.—Debt due by father.—Purchase-money treated as debt due by father.—Refund of whole of purchase-money when necessary before sons are entitled to have sale by father set aside.—Objection that whole of ancestral property is not subject-matter of suit for partition is not a technical one.*—Under the Mitakshara law the son is bound to pay out of the ancestral property in his hands the debts contracted by his father, unless he can show that the debts were contracted for an immoral purpose. When, therefore, A. and B., sons of C., a family governed by the Mitakshara law, sued C. and D., who had purchased some of the joint family property from C. during the minority of A. and B., for a sum of Rs10,000, to recover possession of their shares in such property upon partition, and when in such suit A. and B. failed to prove that the purchase-money, Rs10,000, had been obtained by C. for immoral purposes, *Held* that they were not entitled to succeed without refunding the whole of the sum of Rs10,000 to D., inasmuch as, if the sale was set aside, D. would be entitled to recover the purchase-money from C., and it would thus become a debt due by C., the father, for which, under the circumstances, the whole of the joint family property, including the property sold, would be liable in the hands of A. and B., the sons. In such a suit, if it be treated as one for partition, the objection that the whole of the joint family property is not included in it, is by no means a technical one, inasmuch as it is open to the Court to hold that the property sold should fall entirely within the father's share, and to allot it to the purchaser accordingly. **HASMAT RAI v. SUNDER DAS** . *I. L. R.*, 11 Cal., 396

77. *Ancestral estate.—Son's interest in Mitakshara law.*—Under the Mitakshara and Mayukha the son takes a vested interest in ancestral estate at his birth. But that interest is subject to the liability of that estate for the debts of his father and grandfather. The ancestral property of a Hindu father may be sold either by himself, or by a Civil Court having jurisdiction, in satisfaction of his debts not contracted for illegal or immoral purposes, and such sale will bind sons *in esse* at the time of the sale. **Girdhars Lal v. Kantoo Lal and Muddan Thakoor v. Kantoo Lal**, *L. E.*, 1 I. A., 321 : 14 B. L. R., 187 : 23 W. R., 56, followed. **NARAYANACHARYA v. NARAO KRISHNA**

[*I. L. R.*, 1 Bom., 262]

KOOLDHUF KOONE v. RUNJEET SINGH

[24 W. R., 231]

78. *Sale of ancestral property by father for debts incurred for immoral purposes.—Son's interest in ancestral estate.*—The plaintiffs (two of whom were minors) sued to set aside the sale and recover possession of certain ancestral lands on the ground that they had been sold by their father to pay off debts contracted for immoral purposes. The documentary evidence in the case showed that the

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

lands had been originally mortgaged by the grandfather and father of the plaintiffs to the father of the defendant for Rs. 1,600; that they had subsequently taken from him other loans which, together with the mortgage-debt, amounted to Rs. 4,400-15-0; that on the 23rd May 1868 an agreement (exhibit No. 38) was made between the plaintiffs' father and the father of the defendant by which the former was to sell the equity of redemption in the mortgaged property to the latter in consideration of the latter realising the former from the said debt of Rs. 4,400-15-0 and paying him the sum of Rs. 235; that, accordingly, on the 25th May 1868, the plaintiffs' father conveyed the property to the defendant's father for Rs. 235 by a deed of sale (exhibit 17), which, however, did not refer either to the agreement (exhibit 38) or to the debts for Rs. 4,400-15-0. There was no allegation or evidence in the case showing that the plaintiffs' grandfather had contracted the debt of Rs. 4,400-15-0 for any immoral purposes, nor that their father applied the sum of Rs. 235 to the payment of debts incurred for immoral purposes, although it was in evidence that he drank to excess. The Court of first instance dismissed the suit, holding, *inter alia*, that the plaintiffs had failed to prove the property to have been sold by their father for debts incurred for excessive drinking. One of the issues raised by the Assistant Judge in appeal was whether there was any necessity for the sale of the property by the plaintiffs' father. He found this issue in the negative, and held the sale invalid, except as to the plaintiffs' father's own share. On special appeal to the High Court, *Held* that, on the above facts, the plaintiffs had failed to establish any case entitling them to set aside the sale of the lands by their father. *Held*, also, that it ought to have been ascertained whether the minor plaintiffs were born before the date of the sale, *viz.*, 25th May 1868, because if they had not been born before that date, their suit would have been unsustainable, as they never could have had any interest in the property. *Quære*.—Even supposing that the plaintiffs' father had applied the sum of Rs. 235 to the payment of debts incurred for the immoral purpose of excessive drinking, whether the trivial amount would have justified the setting aside of the sale of the 25th May 1868, the main consideration for which was the release of the pre-existing debts for Rs. 4,400-15-0. **KASTUR BHAVANI v. APPA . . . I. L. R., 5 Bom., 621**

79. ——— Alienation of ancestral property by father.—Son's interest in ancestral estate.—Debt incurred for immoral or illegal purposes.—Subject to certain limited exceptions (as, for instance, debts contracted for immoral or illegal purposes), the whole of the estate of a Hindu undivided family is, in the hands of sons or grandsons, liable to the debts of the father or grandfather. In 1865, certain lands, the ancestral property of *D.*, were sold under a decree passed against *D.*, and were bought by *J.* These lands had been mortgaged, in 1863, by *D.* to *N.*, in which transaction *D.* had been principal and *J.* his surety. In 1866, *N.* sued on his mort-

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

gage, and on the 21st January 1868 a decree was made, directing the sale of the lands. Under that decree the right, title, and interest of *J.* were sold on the 1st April 1869 to *C.*, and *C.* afterwards sold the lands to *M.* In the present suit the plaintiffs (*D.*'s sons) sued *D.* and *M.* for possession of their two-third shares, alleging that the land was ancestral, and that the whole of it had been illegally sold under the decree of the 21st January 1868. Both the lower Courts held that the land was ancestral; that the plaintiffs were united in interest with their father *D.* when the mortgage debt was contracted by the latter; that the burden lay upon them (plaintiffs) to prove that the debt had been incurred for immoral or illegal purposes, and they failed to discharge it; that they were, therefore, bound by the sale. The lower Courts, accordingly, dismissed the plaintiffs' claim. On second appeal the High Court affirmed the decrees of the Courts below, on the grounds mentioned above. **SADASHIV JOSHI v. DINKAR JOSHI . I. L. R., 6 Bom., 520**

80. ——— Father's authority to bind the interests of his sons in an ancestral property.—Mortgage by father of ancestral property.—Rights of a purchaser at Court sale of an undivided share of a coparcener.—Decree against father upon a mortgage of family property.—Effect of decree ordering sale of mortgaged property.—Purchaser at Court sale when bound to go behind decree and enquire as to whether the debt was properly incurred.—*D.*, the father of the defendants, by a mortgage, dated October 1869, mortgaged a house together with other property to *B.*, the father of the plaintiff. *B.* sued *D.* upon the mortgage, and obtained a decree directing the sale of the mortgaged property. The execution sale took place in July 1877, and the plaintiff (the mortgagee's son) became the purchaser of the house. On attempting to take possession he was resisted by the defendants (sons of the mortgagor), who alleged the house to be ancestral property, and denied the plaintiff's right to more than the third share to which the father had been entitled. *Held* by the High Court, on appeal, upon the authority of *Girdharselall v. Kantoo Lall*, 14 B. L. R., 187, as explained in *Suraj Bansi Koor v. Shoo Prasad*, I. L. R., 5 Cal., 148, that the shares of the defendants were validly bound by their father's mortgage, as it had been found by the lower Court that the debt, in respect of which the mortgage had been executed, had not been contracted by their father for improper or immoral purposes; but that as the purchaser at the execution sale (the plaintiff) was the mortgagee's son, the question arose whether he could be held to be a stranger to his father's suit on the mortgage, and, as such, not bound to go behind the decree and make enquiry as to whether the debt had been improperly incurred. This would depend on the circumstances under which he and his father were living and the relation existing between them. The case was accordingly remanded for a determination of the question whether the plaintiff was a stranger to his father's suit. *Held* that the

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

defendants, not being joint with their father at the date of the suit, were not represented by him, and would be entitled to redeem, but only on condition, if the plaintiff insisted on it, of their redeeming the whole of the house. Unless the mortgage-deed expressly provided for the redemption of the son's interests on payment of a proportionate part of the debt, the mortgage should be treated as one and entire; the father's authority, according to *Girdharsall's* case, being to apply or charge the whole property to or with the payment of his debts not improperly incurred. Where a decree passed in a suit upon a mortgage directs the mortgaged property to be sold, the decision in *Deendyal's* case, *I. L. R., 3 Calc., 198*, which limited the right, title, and interest which passed under the auction sale to the father's share, does not apply. *TRIMBAK BALKRISHNA v. NARAYAN DAMOODAR*. *I. L. R., 8 Bom., 481*

81. ————— Mitakshara law.

—*Mortgage by father of joint ancestral property.—Sale of joint ancestral property in the execution of a decree against father.*—The undivided estate of a joint Hindu family, consisting of a father and his sons, while in the possession and management of the father, was mortgaged by him, with the knowledge of the sons, as security for the repayment of moneys borrowed and lent for the use and benefit of the family. The lender of these moneys sued the father to recover them by the sale of the family estate, and obtained a decree against him directing its sale, and sought to bring the family estate to sale in the execution of this decree. *Held*, in a suit by one of the sons to protect his share in such estate from sale in the execution of such decree, that such decree could not be regarded as against the father only, and his share in such property was not alone saleable in execution of it, but such suit and decree must be regarded as against the father as representing the joint family, and the whole of the family estate was saleable in execution of such decree. *Bhissur Lal Sahoo v. Luchmessur Singh, L. R., 6 I. A., 233*, followed. *Deendyal Lal v. Jugdeop Narain Singh, I. L. R., 3 Calc., 198*, distinguished. *DEVA SINGH v. RAM MANOHAR*. *I. L. R., 2 All., 748*

82. ————— Mitakshara law.

—*Mortgage by a father of ancestral property.—Sale of father's rights and interests in the execution of a decree.*—The undivided estate of a joint Hindu family consisting of a father and his minor sons and grandsons, while in the possession and management of the father, was mortgaged by him as security for the repayment of moneys borrowed by him. The lender of these moneys sued the father to recover them by the sale of the family estate, and obtained a decree against him directing its sale. The right, title, and interest of the father only in the family estate was sold in the execution of this decree. The auction-purchasers having taken possession of the family estate, the sons and grandsons joined in a suit against them to recover their shares of the estate. *Held* that

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

the sons and grandsons were entitled to recover their shares of the estate, inasmuch as the auction-purchasers had only acquired by their auction-purchase the rights and interests of the father in the estate, and that, for the same reason, it was unnecessary to enquire into the nature of the debt on account of which the father's rights and interests in the estate were sold. *Deendyal Lal v. Jugdeop Narain Singh, I. L. R., 3 Calc., 198*, followed. *Girdhars Lal v. Kantoo Lal, 14 B. L. R., 187*, distinguished. *Held* also that the rulings in those two cases are perfectly consistent. *BIKA SINGH v. LACHMAN SINGH* [*I. L. R., 2 All., 800*]

83. ————— Joint Hindu family property.—Alienation by father.—Son's rights.

—*G.*, a member of a joint undivided Hindu family consisting of himself and his sons, having wrongfully converted to his own use the property of another person, such person sued him for damages for such conversion, and obtained a decree in the execution of which *G.'s* rights and interests in the family property were put up for sale and purchased by *C.*, who in execution of such decree took possession of such property. *G.'s* sons thereupon sued *C.* to recover their shares, according to Hindu law, of such property. *Held, per* OLDFIELD, *J.*, that, although the father's debt was not one which the sons were in duty bound to pay, it might be that, had the family estate passed out of the family under the execution sale, the sons could not have recovered it from *C.*, who was an auction-purchaser and a stranger to the suit against the father. Inasmuch as, however, the claim in that suit was not for a joint family debt, but a personal claim against the father, who was alone represented in that suit, and the decree in that suit was against him personally, and it was only his rights and interests that were put up for sale and purchased by *C.*, the sons were entitled to recover from *C.* their shares of the family property. *Suraj Bansi Koor v. Sheo Persad Singh, I. L. R., 5 Calc., 148*, distinguished. *Per* STRAIGHT, *J.*—That the sons were entitled to recover their shares of the family property, the decree being purely a personal decree against the father, and his rights and interests only in such property having been put up for sale and purchased by *C.* *CHANDRA SEN v. GANGA RAM* [*I. L. R., 2 All., 809*]

84. ————— Mitakshara law.

—*Mortgage of joint ancestral property by father.—Sale of property in execution of a decree against father.—Son's right.*—The ancestral estate of a joint Hindu family, consisting of a father and his minor son, was mortgaged by the father, as the head of the family and manager of the estate, as security for the repayment of moneys borrowed for the use and benefit of the family. The lender of these moneys sued the father to recover them by the sale of the estate, and obtained a decree against him directing its sale, and sought to bring the estate to sale in the execution of such decree. *Held*, in a suit by the minor

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

son to protect his share in the estate from sale in the execution of such decree, that the suit in which such decree was made, and such decree, being regarded as a suit against the father, and as a decree made against him as representing the family, such decree might be executed against the estate, notwithstanding the minor son had not formally been joined as a defendant in such suit. *Bisnessur Lal Sahoo v. Lucknessur Singh, I. L. R., 6 I. A., 383*, followed. *Deendyal Lal v. Jagdeep Narain Singh, I. L. R., 3 Cal., 198*, distinguished. *Gya Din v. Raj Bahsi Kuar, I. L. R., 3 All., 191*

85. ———— Joint Hindu family property.—Right of son.—*E.*, a member of a joint undivided Hindu family consisting of himself and his son *E.*, as the manager of the family, borrowed moneys for lawful purposes and executed a bond for their repayment in which he hypothecated a share of mousab *B.*, such share being ancestral property, as collateral security for their repayment, with the knowledge and approbation of *E.* The obligee of such bond sued *B.* thereon and obtained a decree, which directed the sale of such share, and such share was put up for sale and was purchased by *C.* *E.* subsequently sued *B.* and his mother for partition of the family property, including such share, claiming a one-third share of such property. *C.* was made a defendant in the suit, and so was *P.* *E.*'s grandmother, who claimed to share equally with the other members of the family in such property. *Held* that it must be presumed that *B.* was sued on such bond, and that the decree in such suit was made against him as the head of the family, and *E.* could not recover from *C.* the share of mousab *B.* *RADEHA KISHEN MAN v. BACHHA MAN, I. L. R., 3 All., 118*

86. ———— Adult son.—Mortgage of family property by father.—Decree against father.—Right of son.—The father in a joint undivided Hindu family governed by the law of the Mitakshara mortgaged the ancestral property of the family as security for a debt incurred by him. His son was of age at the time of the mortgage, but the mortgagee did not make the son join in the mortgage. When the mortgagee brought a suit to enforce the mortgage, he brought it against the father alone; and he obtained a decree against the father alone for the sale of the property. On the property being attached in execution of the decree, the son objected to the sale of the property, so far as his own share according to Hindu law was concerned. This objection having been disallowed, he sued the mortgagee for a declaration that such share was not liable to be sold in execution of the decree, claiming on the ground that he was not bound by the mortgage or the decree, not having joined in the mortgage or been a party to the suit in which the decree was made, and that the debt secured by the mortgage had been incurred by his father for immoral purposes. *Held* that the son was not entitled to succeed in such suit merely because, although he was of age, he was not

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

required by the mortgagee to join in the mortgage, and was not made a party to the suit to enforce the mortgage; but that he was in the same position as he would have been had he been a minor at the time the mortgage was made and the decree was passed, and was therefore only entitled to succeed if he showed that the debt incurred by his father was incurred for immoral purposes of his own. *Held* further that, inasmuch as the debt in question was incurred for necessary purposes, and as the son was aware of the mortgage and did not protest against it, but on the contrary stood by and benefited thereby, and as he was aware of the suit and did not apply to be made a party thereto, he was asking too late for the relief which he sought. *Ram Narain Lal v. Bhowani Prasad, I. L. R., 3 All., 443*, referred to. *PHUL CHAND v. MAN SINGH, I. L. R., 4 All., 309*

87. ———— Alienation of ancestral property by father.—Suit by son to recover his interest.—Burden of proof.—Where a Hindu, a minor, governed by the law of the Mitakshara, sued to set aside an alienation of ancestral property by his father, on the ground that such alienation was made to satisfy a debt contracted for immoral purposes, *Held*, by STRAIGHT, J., that the burden of proving that the debt was contracted for such purposes, and that the defendant had notice that it was contracted for such purposes, lay on the plaintiff, and that the plaintiff was not discharged from such burden, because he had proved generally that his father had been guilty of extravagant waste of the ancestral property. *Hanooman Persaud Pandey v. Babooes Munraj Koonworee, 6 Moore's I. A., 892*; and *Suraj Bansi Koer v. Sheo Persad Singh, I. L. R., 5 Cal., 148*, referred to. *Held*, also, by STRAIGHT, J., that it could not be presumed from such conduct of the father that the debt in question had been contracted for immoral purposes. *Per* STUART, C. J., that the plaintiff's father having been guilty of extravagant waste of the ancestral property, the burden of proof in this case lay on the defendant. As, however, there was reason to suspect that the suit was a collusive one, brought at the instance of the plaintiff's father, if not really by him, and it was very doubtful whether the alienation was objectionable on the ground taken in the name of the plaintiff, it would not be safe to give the plaintiff a decree. *HANUMAN SINGH v. NANAK CHAND, I. L. R., 6 All., 193*

88. ———— Mitakshara and Mithila law.—Execution of decree.—Sale of ancestral estate in satisfaction of father's debt.—Parties to proceedings.—There is no conflict of authority as to the principle that sons cannot set up their rights, which are to take present vested interests, on their birth, jointly with their father in ancestral estate, against their father's alienation for an antecedent debt, or against his creditors' remedies for his debt, if such debt has not been contracted for an immoral purpose; the law on this point being

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

the same under the Mitakshara and the Mithil^a shasters. From the above must be distinguished the question how far the joint sons can be precluded from disputing the liability attaching to their shares, where proceedings have been taken by or against the father alone. If the father's debt, not having been contracted for an immoral purpose, is such as to support a sale of the entirety of the joint estate, either he may sell the latter without suit, or the creditor may obtain a sale of it by suit. But the joint sons, not being parties to the execution proceedings or to the sale, are not precluded from having a question as to the nature of the debt tried in a suit of their own; a right which will, however, avail them nothing unless it can be shown that the debt was not such as to justify a sale of the joint estate. If, upon the proceedings and in regard to the intention of the parties, doubts are raised whether what has been sold is the interest of the father alone or the joint estate, the absence of the sons from the proceedings may be a material consideration. But if the purchaser has bargained and paid for the entirety, he may defend his title upon any ground which would have justified a sale, had the sons been brought in to defend their interests in the execution proceedings. *Deendyal v. Jagdeep Narain Singh, L. R., 4 I. A., 247; I. L. R., 8 Cal., 198*, does not lay down as an invariable rule that coparcenary interests will not pass by an execution sale unless the coparceners are joined in the suit, or that only the father's interest passes to the purchaser where the suit was against the father alone. This debt being one which must be taken as a joint family debt, though the suit upon it was against the father alone.—*Held* that a claim by minor sons for exemption of their shares failed on the merits, the entire family estate having passed by the sale. **NANOMI BABUASIN v. MODHUN MOHUN**

[*I. L. R., 13 Cal., 21*
I. L. R., 13 I. A., 1

89. ———— *Effect of sale in execution of mortgage-decree and of money-decree against the father.—Transfer of Property Act, s. 85.*—Where the property of an undivided Hindu family, consisting of father and sons, has been sold in execution of a decree obtained against the father only for a debt contracted by him for purposes neither immoral nor illegal, the sons cannot recover their shares from the purchaser, if the decree has been obtained upon a mortgage or hypothecation of the property directing such property to be sold to realise the debt. It is otherwise if the decree in execution of which the sale takes place is a mere money-decree. *Per KENNAN, J.*—It will still be necessary in all cases where a creditor seeks in a suit to bind a son's estate in ancestral or other property for a debt incurred by his father and not by him, that the son should be made party to the suit. *Girdharee Lall v. Kantoo Lall, L. R., 1 I. A., 321; Muddun Thakoor v. Kantoo Lall, L. R., 1 I. A., 321; and Deendyal Lall v. Jagdeep Narain Singh, L. R., 4 I. A., 247*, discussed. *Hardi Narain Sahu v.*

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

Ruder Perakash Misser, I. L. R., 9 Cal., 626, followed. *Ponnappa Pillai v. Pappuwayyengar, I. L. R., 4 Mad., 1*, modified. **PONNAPPA PILLAI v. PAPPUVAYYANGAR** . . . *I. L. R., 9 Mad., 343*

90. ———— *Decree against father.—Sale of ancestral estate in execution of money-decree.*—A sale of ancestral property in execution of a money-decree obtained against a Hindu father will, if the debt was neither immoral nor illegal, pass to the purchaser the entire interest of which the father could dispose,—i.e., his son's as well as his own share,—provided the purchaser has bargained and paid for such interest. The son, not being bound by the decree against his father, may contest the sale by suit, but unless he proves that the debt was not such as to justify the sale, he cannot succeed. The revised ruling of the Full Bench in *Ponnappa v. Pappuwayyengar, I. L. R., 9 Mad., 343*, as to sales in execution of money-decrees against the Hindu father, has been overruled by the decision of the Privy Council in *Nanomi Babuasia v. Modun Mohun, L. R., 13 I. A., 1; S. C. I. L. R., 13 Cal., 21. NARASANNA v. GURAPPA* . . . *I. L. R., 9 Mad., 424*

91. ———— *Power of the father to alienate ancestral property for pious purposes.*—According to the Hindu law, the power of the father to make alienations of joint ancestral estate without his son's consent extends to provision of a permanent shrine for a family idol. *Gopal Chand Pande v. Babu Kunwar Singh, S. D. A., 1843, p. 24*, referred to. In a suit brought by a son to set aside an alienation of ancestral estate by the father for the purpose above mentioned, the son having contended that the real motive for the gift was not piety to the gods, but malice against him, the Court remitted an issue to the lower Appellate Court for the purpose of ascertaining whether the endowment had been made *bond fide* for the satisfaction of the idol and the benefit of the donor's soul, or from motives of spite against the plaintiff. **RAGHUNATH PRASAD v. GOBIND PRASAD** . . . *I. L. R., 8 All., 76*

92. ———— *Joint Hindu family.—Liability of ancestral estate for satisfaction of father's debt, when not incurred for immoral purposes.*—A suit was brought against G., the head of a joint Hindu family, by S., to whom he had mortgaged ten biswas of ancestral estate as security for a loan, to recover the amount of the loan by enforcement of the mortgage against the entire ten biswas. During the pendency of the suit, G. died, and his son Z. and his widow B. were brought on the record as his legal representatives. In support of his claim to enforce the mortgage against the entire ten biswas, and not merely against the share therein which G., during his lifetime, might have got separated, the plaintiff pleaded that the debt incurred by G. was of such a character that, according to the Hindu law, his son Z. was under a pious duty to discharge it out of his own estate. It was found

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Liability of son for father's debts—continued.**

that, although the father was grossly extravagant and selfish in his expenditure, there was no evidence that the proceeds of the particular loan in question were applied to any special licentious purposes, but that the money was not borrowed to meet any family necessity or laid out in necessary expenses, but used in *G.'s* personal expenses. *Held* that this evidence did not justify the lower Court in decreeing that the debt should be charged on the share of the father alone in the ten biswas mortgaged, as it did not establish that he had wasted the money on immoral purposes, or that the debt was such that a pious son would be free to repudiate it. *Nanomi Babuasia v. Modun Mohun, I. L. R., 13 Cal., 21, followed. SITA RAM v. ZALIM SINGH. I. L. R., 8 All, 231*

93. ————— *Suit by sons to set aside alienation.—Burden of proof.*—The rule enunciated by the Privy Council in *Mudden Thakoor v. Kantoo Lall, 14 B. L. R., 187, and Suraj Bansi Koer v. Sheo Persad Singh, I. L. R., 5 Cal., 148*, "that where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debt, cannot recover that property, unless they show that the debts were contracted for immoral purposes to the knowledge of the vendee or mortgagee," is limited to antecedent debts, i.e., to debts contracted before the sale or mortgage sought to be impeached by the son; and it does not cover cases in which a sum in ready money has been paid over to the father by the vendee or mortgagee. The authorities seem to come to this, that in those cases where a person buys ancestral estate, or takes a mortgage of it from the father, whom he knows to have only a limited interest in it, for a sum of ready money paid down at the time of the transaction, such person, in a suit by the sons to avoid it, must establish that he made all reasonable and fair inquiry before effecting the sale or mortgage, and that he was satisfied by such inquiry, and believed, in paying his money, that it was required for the legal necessities of the joint family, in respect of which the father as head and managing member, could deal with and bind the joint ancestral estate. *LAL SINGH v. DEO NARAIN SINGH. I. L. R., 8 All, 279*

94. ————— *Suit to set aside alienation.—Cause of action.—Limitation.*—A son under the Mitakshara law, whatever right he may have during his father's lifetime, may, within twelve years from his father's death, sue to recover ancestral property improperly alienated by the father. *PROTAPNARAIN SINGH v. MONOHUR DOSS. W. R., 1864, 96*

95. ————— *Cause of action.—Limitation Act XIV of 1859, s. 1, cl. 12.*—*L.'s* father, a Hindu, living under the Mitakshara law, alienated in 1848 ancestral immoveable property by

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Suit to set aside alienation—continued.**

deed of absolute sale, and possession was taken by the alienee at the time. In 1838, *L.*, who was born in 1837, sued on his own account and as guardian of his minor brother *R.*, who was born in 1856, to set aside the sale. The father died in 1857. *Held, L.'s* cause of action accrued when possession was taken under the deed of sale, and not at the father's death. *R.'s* birth did not create a new right of action in *L.* either alone or jointly with *R.* The suit, therefore, was barred by lapse of time. Where the alienation was by deed of conditional sale, followed by decrees for foreclosure and possession, to which *L.* and *R.* were not parties,—*Held*, the cause of action accrued when possession was taken under the decree. *RAJA RAM THWARI v. LUCHMUN PRASAD [B. L. R., Sup. Vol., 731: 2 Ind. Jur., N. S., 216 8 W. R., 15*

BEER KISHORE SUNEY SINGH v. HUR BULLUB NARAIN SINGH. 7 W. R., 502

96. ————— *Ancestral property.—Cause of action.*—According to the Mitakshara law a son has a right, during the lifetime of his father, to set aside alienations of ancestral property made without his consent. His cause of action arises from the date when possession is taken by the purchaser. *AGHORI RAMASARAG SINGH v. COCHRANE [5 B. L. R., Ap., 14*

In such a case the cause of action arises at the date of the alienation. *BEER PERSHAD v. DOORGA PERSHAD. W. R., 1864, 215*

SHEETUL PERSHAD SINGH v. GOUR DYAL SINGH [1 W. R., 233

97. ————— *Alienation by father without son's consent.—Enquiry as to legal necessity by mortgagee.*—A mortgagee acquiring by operation of law the possession of an estate mortgaged by a Hindu father without the son's consent, is bound to enquire whether the debt on account of which the mortgage was given was a legally necessary one or not; otherwise it will not avail him that the Court has on his application declared the mortgage foreclosed, or the conditional sale rendered absolute. *PURMANUND v. ORUMBAH KOER [W. R., 1864, 143*

98. ————— *Sale effected to pay ancestral debt.—Obligation on purchaser to enquire whether it could have been paid from other sources.*—Under Hindu law, where there is found to be an ancestral debt, and a sale is effected to pay it, the purchaser at such sale is not bound to enquire whether the debt could have been met from other sources. *AJEY RAM v. GIRDHAREE. 4 N. W., 110*

99. ————— *Obligation on purchaser to show necessity for sale.—Onus probandi.*—Where a son under the Mithila law sued to set aside sales by his father,—*Held* that the purchasers were not bound to show an absolute necessity for the sales, it being sufficient if they have acted bona

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Suit to set aside alienation—continued.**

fide and with due caution, and were reasonably satisfied, at the time of their respective purchases, of the necessity of the sales in order to meet debts which the father had a right to discharge. The *onus probandi* in such cases will vary according to the circumstances. **BHOORUM KORE v. SAHEBMADEE** [6 W. R., 149]

100. ——— *Onus probandi*.—In a suit brought by a Hindu to contest an alienation of family property made by his father, the onus of proving that the alienation is binding on the son lies upon those who claim the benefit of the alienation. **SUBRAMANYA v. SADASIYA** [I. L. R., 8 Mad., 75]

101. ——— *Mitakshara law*.—*Ancestral property*.—*Refund of purchase-money*.—Under the Mitakshara law when a sale of ancestral property by the father has been set aside in a suit by the son, on the ground that there was no such necessity as would legalise the sale, and that the son had not acquiesced in the alienation, the son is entitled to recover the property without refunding the purchase-money, unless such circumstances are proved by the purchaser as would give him an equitable right to compel a refund. **MODHOO DYAL SINGH v. GOLBUR SINGH** . B. L. R., Sup. Vol., 1018

S. C. MODHOO DYAL SINGH v. GOLBUR SINGH [9 W. R., 511]

102. ——— *Mitakshara law*.—*Legal necessity*.—*Ancestral property*.—*Refund of purchase-money*.—A., a Hindu, subject to the Mitakshara law, sold his right and interest in the undivided ancestral estate of his family without the consent of his co-sharers, and not for the benefit of the estate, but in order to pay off a personal debt. The sale was by auction to an innocent purchaser for value. *Held* that, in a suit brought within twelve years from the date on which the purchaser obtained possession, the sons and grandsons of A., deceased, were entitled to recover possession without making any refund of the purchase-money. **NATHU LAL CHOWDEY v. CHADI SAHI** [4 B. L. R., A. C., 15; 12 W. R., 446]

103. ——— *Bond fide purchaser from vendee of father*.—*Refund of purchase-money*.—In a suit by some members of a joint family under Mitakshara law to set aside an alienation of some of the joint family property effected by their father, it appeared that ten years had elapsed since the alienation; and that about six years before the suit was brought, the purchaser from the father sold again to the principal defendants for valuable consideration, and there was no suggestion that these defendants did not purchase *bond fide*, the plaintiffs apparently acquiescing in the sale, and not interrupting during that time the enjoyment of the property by the father's vendee. The Court refused to set aside the alienation. The alienation would not have been set aside at any rate without a refund of the

HINDU LAW—ALIENATION—continued.**4. ALIENATION BY FATHER—continued.****Suit to set aside alienation—continued.**

purchase-money to the defendants. **SURUB NARAIN CHOWDEY v. SHEW GOBIND PANDEY** [11 B. L. R., Ap., 28]

5. ALIENATION BY WIDOW.**(a) ALIENATION OF INCOME AND ACCUMULATIONS.**

104. ——— *Alienation of income*.—*Accumulations*.—A Hindu widow can alienate the income of the husband's property, it forming no part of his estate; but income and accumulations are not the same thing; therefore, *Quare*, whether she can so deal with accumulations. *In the goods of HARENDRA NARAYAN. KAILASHNATH GHOSH v. BISWANATH BISWAS* 4 B. L. R., O. C., 41

105. ——— *Accumulations*.—*Purchase of property out of income for maintenance of family*.—*Reversioners*.—A Hindu widow cannot alienate moveable or immovable properties acquired by her out of the funds derived from the income of her husband's estate. Such properties descend to the heirs of the husband and not of the widow. Where, however, a widow held under a deed which conveyed the property to her to enjoy for her lifetime, and to incur all needful expenses,—*Held*, she was entitled to invest sums out of the income for the benefit of her daughter and granddaughter in the purchase of immovable property for their maintenance. **CHOWDEY BHOLANATH THAKOOR v. BHAGABATTI DEBI. BHAGABATTI DEBI v. CHOWDEY BHOLANATH THAKOOR** [7 B. L. R., 93; 15 W. R., 63]

Reversed on the merits by the Privy Council.

[I. L. R., 1 Calc., 104]

106. ——— *Accumulations*.—It being doubtful whether the purchase of the land in dispute by the plaintiff's mother was made out of the *current income* (in which case it is her self-acquired property) or out of *accumulations* of her husband's estate,—*Held* (broadly following the principle laid down in *Soorjesomonee Dassie v. Denobundo Mullick*, 9 Moore's I. A., 123, that the purchase being made with moneys derived from the income of her husband's estate then lying in her hands, she was competent to alienate her right and interest in whole or in part to reconvert them into money and spend it if she chose. *Gross v. Amritamayi*, 4 B. L. R., O. C., 1, explained and reconciled; and *Gonda Koor v. Oodey Singh*, 14 B. L. R., 169, distinguished. **PUDDO MONEE DOSSEE v. DWARKANATH BISWAS** 25 W. R., 335

107. ——— *Alienation of property purchased with funds derived from husband's estate*.—A widow is not competent to alienate property which she has purchased with funds derived from her husband's estate after his death, and purchases with such funds would not belong to the widow otherwise than as the land from which the money arose belonged to her. **NIHAL KHAN v. HUB CHURN LALL** 1 Agra, 219

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(a) ALIENATION OF INCOME AND ACCUMULATIONS—continued.**

108. ———— Alienation of house erected by widow out of savings of land inherited from husband.—A Hindu widow has no power to sell a house erected by her out of savings of her income on land inherited from her husband. *FAKIRA DOBRY v. GOPI LALL* . 6 C. L. R., 68

109. ———— Alienation of property purchased with accumulations derived from husband's estate.—*Income.—Accumulations.*—*Quare.*—Whether a Hindu widow has power to alienate, beyond her own life-interest, property which she has purchased from accumulations of income derived from her late husband's estate, made after his death, and while she was entitled to a Hindu widow's interest in such estate? *HUNSBUTTI KERRAIN v. ISHRI DUT KOER*

[I. L. R., 5 Calc., 512; 4 C. L. R., 511]

In the same case in the Privy Council it was held that—A widow's savings from the income of her limited estate are not her stridhuni; and if she has made no attempt to dispose of them in her life-time, there is no dispute but that they follow the estate from which they arose. But it is not always possible to fix the line which separates accretions to the husband's estate from income held in suspense in the widow's hands, as to which she has not determined whether or not she will spend it. Where, however, both the family property, and property purchased by the widow out of savings from her income, were alienated by her, with the object of changing the succession,—*Held*, that accretion was clearly established, and that the after-purchases were inalienable by her for any purpose that would not justify alienation of the original estate. A daughter, obtaining a transfer from her deceased father's widows of their interests in his estate, does not acquire thereby an estate valid against the title of the father's collateral heirs expectant on the deaths of the widows. *ISHRI DUT KOER v. HANSBUTTI KERRAIN*

[I. L. R., 10 Calc., 324; 13 C. L. R., 418
I. R., 10 I. A., 150]

110. ———— Widow's power over land purchased out of income of husband's estate.—*Descent of lands purchased by widow out of income of life-estate.*—Land purchased by a Hindu widow with money derived from the income of her life-estate passes, when undisposed of by her, to the heirs of her husband as an increment to the estate, and not to her heirs as property over which she had absolute control. *ANUND CHUNDRA MUNDUL v. NILMONY JOURDAR*

[I. L. R., 9 Calc., 758; 12 C. L. R., 352]

(b) ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS.

111. ———— Legal necessity.—*Necessity.*—*Evidence of.*—A sale by a Hindu widow of land inherited by her from her husband is valid only when made of necessity and for certain purposes; but on

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(b) ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS—continued.****Legal necessity—continued.**

this point, where the plaintiff in a suit to set aside such a sale, has relied in the Court below solely on the ground that the land had been devised inconsistently with the exercise of the widow's power of sale, the Appellate Court will be satisfied with evidence less complete and positive than would otherwise have been required. *RANGASWAMI AYYANGAR v. VANJULATAUMAL* 1 Mad., 28

112. ———— *Suit by reversioner.*—*Cause of action.*—A, a Hindu widow, obtained a loan of a sum of money by mortgage of a certain parcel of property belonging to her husband. The mortgagee obtained a decree, and in execution thereof caused the property to be sold. In a suit by A's daughter's son, the next reversionary heir, for a declaration that the sale was invalid as against him, the lower Appellate Court held that there was no cause of action. *Held* in special appeal, that the existence of a cause of action depended upon whether the widow incurred the debt under legal necessity; and the case was remanded for trial of that question. *BISTORENHARI SAHOY v. LALA BAIJNATH PRASAD*

[7 B. L. R., 213; 16 W. R., 49]

113. ———— Alienation of ancestral property.—*Jain law.*—The alienation by gift by the widow of a Bindala Jain of her husband's ancestral property is invalid according to the Mitakshara, which is the ordinary law governing Bindala Jains in the absence of custom to the contrary. *BACHHBI v. MAKHAN LAL* I. L. R., 3 All., 55

114. ———— *Alienation without necessity.*—A conveyance of ancestral property by a Hindu widow without proof of necessity can only operate as a conveyance of her life-interest. The purchase of a kismut sold for Government revenue does not destroy the pre-existing rights of the holders of the tenure. Reversioners are as much entitled to have a sale of their share in such a kismut set aside as a sale of any other property by the widow without necessity. *TARINNE CHURN BANERJEE v. NUND COOMAR BANERJEE* 1 W. R., 47

115. ———— Alienation of moveable property.—*Widow's estate.*—The restriction placed by the Hindu law on a widow's power of alienation of her husband's estate extends to moveable as well as immovable property. *NARASIMAH v. VENKATADRI* [I. L. R., 8 Mad., 290]

116. ———— A Hindu widow is not at liberty to defeat the rights of reversioners by alienating or wasting moveable property inherited from her husband. *BUCHI RAMAYYA v. JAGAPATHI* [I. L. R., 8 Mad., 304]

117. ———— Lease granted by widow.—*Duration of, for widow's life.*—A lease granted by a childless Hindu widow is valid and endures for the life of the widow. *MOHUN KOOWUR v. ZORAMUN SINGH* Marsh., 166; 1 Hay, 372

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.**

(b) **ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS—continued.**

118. ——— Alienation of husband's property.—*Validity of conveyance for life of widow.*—Alienation by a Hindu widow of property inherited from her deceased husband is valid for the period of her own life, though the conveyance may purport to convey a greater interest. **MELGIRAPPA BIN SOLBAPPA THELI v. SHIVAPPA BIN ERAPPA**

[6 Bom., A. C., 270

RANGUTTY KURMOKAR v. BOISTUB CHURN MOZKODAR 7 W. R., 167

119. ——— Alienation of husband's immoveable property.—*Power to make absolute alienation.*—A purchaser of immoveable property from a Hindu widow, in order to show that the property is absolutely conveyed to him, ought to aver and prove that she sold it under such special circumstances as justify a Hindu widow in alienating the immoveable property of her husband without the consent of his heirs. Even if her husband were separate in estate from his father and brothers at the time of his death, and died without male issue, his widow would have no power to make an absolute alienation of his estate in the absence of such special circumstances. She can only dispose of her (widow's) estate in his immoveable property, which estate determines either upon her death or re-marriage, and the purchaser is not entitled to retain the property after the occurrence of either of these events. The plaintiff sued to recover possession of certain immoveable property sold to him by the first defendant, a Hindu widow. The second defendant answered that his father and the first defendant's husband were undivided brothers, and that, as a childless widow, she had no right to sell the property. Both the lower Courts upheld the sale as absolute, on the ground that she was competent to make it as widow of a separate Hindu. The High Court, on second appeal, held that the decrees of the lower Courts were unsustainable, as they did not contain the limitation pointed out above, and remanded the case for the trial of the issue, whether there were any such special circumstances as would justify the absolute sale by the first defendant to the plaintiff. **GURUNATH NIKANTH v. KRISHNAJI** . . . I. L. R., 4 Bom., 462

120. ——— Gift by Hindu widow after mortgage.—*Equity of redemption, Alienation of.*—Where a Hindu widow mortgaged immoveable property to one person, and afterwards gave it in gift to another,—*Held* that the deed of gift did not convey to the donee the widow's equity of redemption. **JAGANNATH VITHAL v. APAJI VISHNU**

[5 Bom., A. C., 217

121. ——— Alienation by widow as administratrix of husband.—*Presumption of validity.*—Where a sale of landed property was made by a Hindu widow as administratrix to the estate of her deceased husband,—*Held* that she had power to dispose of the land for any purpose for which as administratrix she might properly do so. *Held* also,

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.**

(b) **ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS—continued.**

Alienation by widow as administratrix of husband—continued.

that an improper disposal of the property was not to be presumed against a purchaser from her, but that the sale must be taken to be proper and valid, unless it appeared that to the purchaser's knowledge she was for an unlawful purpose converting the estate. *Held* also, that she having the right to sell as administratrix, it could not be presumed that she sold as a widow. **LOGANADA MUDALI v. RAMASWAMI**

[1 Mad., 384

122. ——— Grounds supporting charge on the inheritance by a widow for her debt.—*Obligation of purchaser to show nature of transaction.*—*Necessity.*—In transactions such as the alienation by a widow of her estate of inheritance derived from her husband, any creditor, seeking to enforce a charge on such estate, is bound, at least to show the nature of the transaction, and to show that, in advancing his money, he gave credit, on reasonable grounds, to an assertion that the money was wanted for one of the recognised necessities. The principle is, that the lender, although he is not bound to see to the application of the money, and does not lose his rights if, upon *bond fide* inquiry, he has been deceived as to the existence of the necessity which he had reasonable grounds for supposing to exist, still is under an obligation to do certain things. These are to inquire into the necessity for the loan and to satisfy himself, as well as he can, with reference to the parties with whom he is dealing, that the borrower is acting in the particular instance for the benefit of the estate. This principle, laid down in **Hunooman Persaud Panday v. Babooes Munraj Koonweres**, 6 Moore's I. A., 392, in regard to the manager for an infant, has been applied also to alienations by a widow of her estate of inheritance, and to transactions in which a father, in derogation of the rights of his son, under the Mitakshara law, has made an alienation of ancestral family estate. **KAMESWAR PRESHAD v. RUN BAHADUR SINGH**

[I. L. R., 6 Cal., 848, 8 C. L. R., 361

L. R., 8 I. A., 8

123. ——— Purchaser, Obligation of.—*Alienation for sum larger than necessity required.*—*Semble.*—In purchasing from a Hindu widow the purchaser is not bound to look to the appropriation of the money, nor is he affected by the fact that the alienation was made for a larger sum than the necessity of the case required. **KAMIKHAPRASHAD ROY v. JAGADAMBIA DAS** 5 B. L. R., 506

124. ——— Consent of reversioners.—*Movable and immoveable property.*—*Alienation for worship of idol.*—A Hindu widow has power, with the consent of the reversionary heirs, to make a valid alienation, for religious purposes, of property, moveable or immoveable, left by her husband. Where a Hindu widow dedicated property by deed to the worship of an idol, and the property was given to

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(b) ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS—continued.****Consent of reversioners—continued.**

trustees in trust, after the death of the widow, to permit the male heirs of her late husband to receive the rents.—*Held*, that such heirs were entitled to actual possession and to the rents of the estate, provided they devoted it according to the provisions of the deed to the worship of the idol. **BRANJANATH BYSACK v. MATILAL BYSACK**

[3 B. L. R., O. C., 92]

125. ———— *Gift of immovable property inherited from husband.*—A Hindu widow who has inherited immovable property from her husband, though possessed of a limited power of alienating portions of such property for necessary purposes or spiritual uses, cannot dispose by a gift in dharman or krishnaipau of the whole of such immovable property without the consent of the heirs of her husband. **BHASKAR TRIMBAK ACHARYA v. MAHADEV RAMJI**

6 Bom., O. C., 1

126. ———— *Necessity.*—*Evidence.*—*Recital in deed of sale.*—A recital in a deed of sale by a Hindu widow of her deceased husband's property, setting forth that the alienation was necessary for the purpose of paying his debts, is not of itself evidence of such necessity; nor does the attestation of a relative import his concurrence. Such a transaction may become valid by the consent of the husband's kindred, but the kindred in such case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events there ought to be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one, and justified by Hindu law. **RAJLAKHI DEBI v. GOKUL CHANDRA CHOWDERY**

[3 B. L. R., P. C., 57: 12 W. R., P. C., 47
13 Moore's I. A., 206]

127. ———— *Want of consent of remote reversioners.*—*Semble.*—An alienation by a widow and next reversioner without the consent of subsequent reversioners is not binding on such reversioners. *Per* FROST, J. **GOPINATH MOOKERJEE v. KALLY DOSS MULLICK**

[I. L. R., 10 Cal., 225]

128. ———— *Effect of sale against those not consenting.*—The consent of all the heirs living at the time of the execution of a bill of conveyance by a Hindu widow, either directly or by attestation, is requisite to make the sale binding against the reversioners. **KARTICK KUMOKAR v. DEUNNO MONER GOOPTO**

W. R., 1864, 268

129. ———— *Right of purchaser for widow's lifetime.*—The consent of all the reversioners is necessary to make a sale by a childless Hindu widow valid in law; but the purchaser is entitled to hold the property during the widow's lifetime. Only immediate reversioners are entitled to impeach a sale by a widow. **RADHA v. KOAB**

[W. R., 1864, 148]

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(b) ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS—continued.****Consent of reversioners—continued.****CHUNDER MONER DOSSEE v. JOYKISSEN SIRCAR**

[I W. R., 107]

130. ———— *Consent of next reversioner, Effect of, as to others.*—A grant by a Hindu widow, with the sanction and concurrence of the next reversioner, is valid, and creates a title which cannot be impeached on the death of the widow by the person who, but for such grant, would be entitled as heir of her husband. **RAJ BULLUBH SEN v. OOMESH CHUNDER ROOZ**

[I. L. R., 5 Cal., 44: 3 C. L. R., 384]

131. ———— *Consent of heirs.*—*Legal necessity.*—An alienation, by a Hindu widow, of immovable property inherited from her husband is invalid in the absence of legal necessity, but the invalidity can be removed by the consent of all the heirs of the widow's husband who are likely to be interested in disputing the transaction: **Raj Lukhee Deba v. Gokool Chunder Chowdhry**, 13 Moore's I. A., 209: 3 B. L. R., P. C., 57, followed. A sale made conjointly by a Hindu widow and her daughter, who subsequently predeceased her mother, of immovable property inherited by the widow from her husband, in the absence of legal necessity, was ordered to be set aside; and the grandsons of the second cousins of the widow's husband held entitled to recover the property on recouping the vendees the expenses incurred on improvements. **VARJIVAN RANGJI v. GHEEJI GOKALDAS**

I. L. R., 5 Bom., 568

132. ———— *Alienation made with consent of next reversioner.*—*Remoter reversioners.*—A gift by a Hindu widow, who has succeeded to the separate estate of her deceased husband, of such estate, is not valid and does not create a title which cannot be impeached by the remoter reversioner, because it has been made with the consent of the next reversioner. **Raj Bullabh Sen v. Oomesh Chunder Roos**, I. L. R., 5 Cal., 44, and **Noferdoss Roy v. Modhoo Soondari Burmonia**, I. L. R., 5 Cal., 732, dissented from. **Raj Lukhee Deba v. Gokool Chunder Chowdhry**, 13 Moore's I. A., 209, and **Collector of Masulipatam v. Cavali Vencata Narainapah**, 8 Moore's I. A., 539, referred to. **Sia Dasi v. Gur Sahai**, I. L. R., 7 All., 862, and **F. A. No. 116 of 1882**, distinguished. **RAMPHAL RAI v. TULA KUARI**

I. L. R., 6 All., 116

MADAN MOHAN v. PURAN MAL

[I. L. R., 6 All., 288]

133. ———— *Evidence of necessity.*—The consent of a former reversioner to a sale by a Hindu widow, though not binding evidence on a subsequent heir, is strong presumption of the existence of necessity at the time of sale, to be rebutted only by proof of fraud and collusion, or of the absence of necessity. **KALSH MOHUN DEB ROY v. DEHUNJOY SHAHA**

6 W. R., 51

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(b) ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS—continued.****Consent of reversioners—continued.**

134. *Attestation by reversioner.*—Where certain landed property in the possession of a Hindu widow was sold, on the alleged ground of necessity, and the execution of the deed of purchase was attested by the then next heir, it was held that the assent implied in such attestation was not conclusive in law as to the necessity for the sale, though the fact of persons most interested in contesting such a sale being called in to execute the deed is the strongest possible proof of good faith on the part of the purchaser. **MADHUB CHUNDER HAJRAH v. GOBIND CHUNDER BANERJI** . . . **9 W. R., 360**

135. *Attestation of conveyance by reversioner.—Waste.*—The fact of a reversioner being an attesting witness to a conveyance by a Hindu widow is an acquiescence on his part which precludes him from impeaching the sale on the ground of waste. A decree against a Hindu widow for a loan to pay Government revenue is binding on the reversioner. **GOPAL CHUNDER MANNA v. GOUR MONER DOSSEN** . . . **6 W. R., 52**

136. *Widow's estate.—Conveyance by presumptive heir.—Ratification by widow.—Effect of witnessing deed on rights of witness.—Evidence of consent.*—During the lifetime of a Hindu widow, her son, the then presumptive heir to the property of which she was in possession, conveyed it to purchasers by deeds to which she was not a party. Subsequently she by separate deed ratified the conveyances. This deed was witnessed by a more remote reversioner. The son died during the lifetime of his mother, and the witness to the deed of ratification became the next reversionary heir. *Held*, in a suit by him after the widow's death for possession, that at the time of the conveyances the son had a mere contingent reversionary interest in expectancy, and that the subsequent ratification by his mother could not operate as a surrender of her estate so as to change the conveyances, and make them enure as absolute conveyances, but could only amount to a conveyance of her interest. *Held* also, that the fact that the reversionary heir witnessed the deed of ratification, did not in itself amount to evidence of consent to it on his part. **RAM CHUNDER PODDAR v. HARE DAS SEN** . . . **I L. R., 9 Calc., 463**

(c) WHAT CONSTITUTES LEGAL NECESSITY.

137. *Legal necessity.—Pious purposes.*—Hindu law does not regard "pious purposes" as the only "necessary purposes" which justify alienation of inherited property by Hindu ladies. Self-maintenance, discharge of just debts, protection or preservation of the estate, may be regarded as such "necessary purposes" also. **SOORJOO PRESHAD v. KRISHAN PRETAB BAHADOOR**

[**1 N. W., 49: Ed. 1873, 46**

138. *Gift for pious and religious purposes.*—An alienation by a Hindu

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(c) WHAT CONSTITUTES LEGAL NECESSITY—continued.****Legal necessity—continued.**

widow of her deceased husband's estate for pious and religious purposes, made for her own spiritual welfare, and not for that of her deceased husband, is not valid. The power of a Hindu widow to alienate her deceased husband's estate for pious and religious purposes defined. *Collector of Masulipatam v. Cavali Venkata Narrainapah*, **8 Moore's I. A., 529**, referred to. **PURAN DAI v. JAI NARAIN**

[**I L. R., 4 All., 482**

139. *Endowment of idol by Hindu widow.*—A Hindu widow cannot endow an idol with her husband's property or a portion thereof, to the detriment of the reversioners. **KARTICK CHUNDER CHUCKERBUTTY v. GOUR MOHUN ROY** [**1 W. R., 48**

140. *Pious purposes.—Spiritual necessities.*—Although pilgrimages and sacrifices performed by a Hindu widow may be indirectly beneficial to her deceased husband, they are not ceremonies indispensable for his spiritual benefit. A sale by a Hindu widow to raise money for pious acts, not in the nature of spiritual necessities, unless such sale is reasonable in the circumstances of the family and the property sold is but a small portion of the property inherited from her husband, is invalid. **RAMA v. RANGA** . . . **I L. R., 8 Mad., 552**

141. *Pilgrimage.*—Where a Hindu, by will, directed that his widow should have power to sell his property for the purpose of defraying the expenses of a pilgrimage, a *bond fide* purchaser from the widow who, at the time of purchase, believed and had reason to believe that the widow was going on a pilgrimage, and that the property was sold and the money raised for that purpose, is not bound to give back the property at the suit of the reversioner, if there is any evidence that the widow did really go on the pilgrimage. *Per GARTH, C.J.*—In such a case the purchase would be good even if there were no evidence that the widow had gone on a pilgrimage. **RAM KANT CHUCKERBUTTY v. CHUNDER NARAIN DUTT** . . . **2 C. L. R., 474**

142. *Pilgrimage to Benares.*—A pilgrimage to Benares is not a legal necessity to justify a sale by a Hindu widow. **HURROMOHUN AUDHIKARN v. AULUCK MONER DOSSEN** [**1 W. R., 252**

143. *Expenses of pilgrimage to Gya.*—Expenses incurred by a Hindu widow for a pilgrimage to Gya and for the performance of *sradh* are legitimate expenses for which she can alienate her husband's property. Where the amount expended was **Rs. 1,700**, and the property was sold for **Rs. 4,000**,—*Held*, in a suit by the heir against the purchaser to have the sale set aside, that the plaintiff not having offered to repay **Rs. 1,700** and interest, his suit must be dismissed. **MUTTERHAM KOWAR v. GOPAL SAHOO**

[**11 B. L. R., 416: 20 W. R., 187**

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(c) WHAT CONSTITUTES LEGAL NECESSITY—continued.****Legal necessity—continued.**

CHOWDREY JUNMEJOY MULLICK v. RUSSOMOYE DASSEN

[11 B. L. R., 418, note: 10 W. R., 209]

144. ———— *Performance of husband's sraddh at Gya.*—The performance by a widow of her husband's sraddh at Gya is a reasonable necessity for which she may alienate at least a portion of his estate. **MAHOMED ASHRAF v. BROJESURE DOSSEN** . . . 11 B. L. R., 118: 19 W. R., 426

145. ———— *Sraddh of husband.—Marriage of daughter.—Maintenance of grandsons.—Payment of husband's debts.*—The sraddh of the widow's husband, the marriage of his daughter, the maintenance of his grandsons, and the payment of the husband's debts are admitted by Hindu law as legitimate grounds of necessity for alienations. **LALLA GUNPUT LALL v. TOORUN KOONWAR. CHUNDER LALL v. LALLA GUNPUT LALL** . . . 16 W. R., 52

146. ———— *Sraddh of mother.*—According to Hindu law the sraddh of a mother is not a legal necessity, as that of the father is, to justify a sale by a daughter to the prejudice of the daughter's son. **RAJ CHUNDRA DEB BISWAS v. SHEESHOO RAM DEB** . . . 7 W. R., 146

147. ———— *Money borrowed to defray granddaughter's marriage expenses.—Liability of reversioner.*—A Hindu widow borrowed a sum of money for the purpose of defraying the marriage expenses of a granddaughter, the child of a son who had pre-deceased his father. *Held*, that such sum, although it could not properly be considered a charge on the grandfather's estate, yet was one which was legally recoverable from the heirs, who, on the death of the widow, succeeded to the possession of such estate. **RAMOOOMAR MITTHER v. ICHAMOTI DAS** . . . I. L. R., 6 Cal., 36: 6 C. L. R., 429

148. ———— *Loan for investiture of minor.*—*Held* (by GLOVER, J.) that where the family property was small there was no reasonable necessity for contracting a large loan to provide for the minor's investiture according to the Hindu religion. **DOORHYAR BOY v. DULSINGAR SINGH**

[12 W. R., 367]

149. ———— *Joint debt of husband and wife.*—For a debt contracted jointly by a Hindu wife and her husband the husband's property is liable, and therefore the widow would be entitled to sell as much of the estate as was necessary to satisfy a decree for such a debt. **GOLUCK CHUNDER PAUL v. MAHOMED ROHIM** . . . 9 W. R., 316

150. ———— *Payment of debts of husband.*—Debts due by the husband justify alienation by the widow. **KOOL CHUNDER SURMA v. RAMJOY SURMONA** . . . 10 W. R., 8

151. ———— *Debt provided for by lease of ancestral property.*—The existence of

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(c) WHAT CONSTITUTES LEGAL NECESSITY—continued.****Legal necessity—continued.**

a debt, the liquidation of which is provided for by lease of ancestral property, is no justification for alienation of such property by a Hindu widow during her life-tenancy. **TILUOK ROY v. PHOOLMAN ROY**

[7 W. R., 450]

152. ———— *Existence of debts.—Re-purchase of family property.*—Where the Court has expressly found the existence of debts, and that the sale of ancestral property was a *bond fide* one, the circumstance that there was no actual pressure at the time in the shape of suits by the creditors for the recovery of their debts, is not of itself sufficient to invalidate the alienation. A sale of ancestral property merely for the purpose of procuring funds for the re-purchase of other property formerly belonging to the family, cannot of itself be considered as a sale for any of the necessary purposes sanctioned by law. **KAIHUR SINGH v. ROOP SINGH** . . . 3 N. W., 4

153. ———— *Bond executed by wife to pay husband's debts.*—A wife and her husband's brothers jointly executed a bond for the repayment of moneys borrowed to pay a debt due by her husband and his brothers, and to carry on the cultivation of lands held by her husband and his brothers, and hypothecated the family house as collateral security for the repayment of such money. *Held* that the wife was not justified in borrowing money to pay her husband's debt, and the want of money for cultivation of his lands would not justify her in pledging his credit for a joint loan taken by his brothers in which his liability would extend to the whole debt, nor would it justify her hypothecating his property, and the husband and his property were therefore not liable for the bond debt. **PURI v. MAHABHO PRASAD** . . . I. L. R., 3 All., 122

154. ———— *Payment of time-barred debt.*—The payment of a time-barred debt of her deceased husband is not a valid cause for the absolute alienation by a Hindu widow of her deceased husband's immoveable estate. **MELGIRAPPA BIN SOLBAPPA TELI v. SHIVAPPA BIN ERAPPA**

[6 Bom., A. C., 270]

155. ———— *Debt of widow's own contracting.—Consent of reversioner.—Semble.*—A sale by a Hindu widow for a just debt, made in conformity with the Hindu law and with the consent of the reversioner, may be valid, although the debt creating the necessity for the sale was a debt, not of the ancestor's time, but of the widow's own contracting. **SHOOBUNKUREN DOSSEN v. CHAND MONNE DOSSEN** . . . 7 W. R., 335

156. ———— *Judgment-debt.—Evidence of necessity.*—A judgment-debt is *prima facie* proof of necessity. **BHOWRA v. ROOP KISHORE**

[5 N. W., 89]

157. ———— *Debt, Evidence of nature of.*—Mere production of decrees will not

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(c) WHAT CONSTITUTES LEGAL NECESSITY—continued.****Legal necessity—continued.**

establish the propriety and necessity of a sale of ancestral property. There should be evidence of the nature of the debts in which such decrees originated. **RROTHER SINGH v. RAMJEET** . . . 2 N. W., 50

158. . . . *Sales of ancestral property.*—The mere fact that sales of ancestral property took place in execution of decrees against the ancestor, does not of itself show that the sales were for necessary or justifiable purposes. **BRUJO KISHORE GUGENDAR MOHAPATTUR v. HUREN KISHORE DOSS** . . . 10 W. R., 57

159. . . . *Decree for arrears of revenue.*—Eight of widow to usufruct for her own purposes.—Where an estate devolved to a widow almost unincumbered, with an ample income more than sufficient to pay a small debt due by the husband, the Government revenue, and all other expenses including the marriage of daughters, the widow was held not to be justified by any legal necessity in alienating the estate in the absence of any actual pressure, such as an outstanding decree or impending sale for arrears of revenue. **LALLA BYRNATH PERSHAD v. BISSEN BEHARRI SAHAY SINGH** [19 W. R., 80]

160. . . . *Expenses of litigation.*—*Fraudulent assignment.*—*Suit to declare deed binding on reversioners.*—A Hindu, **R. C.**, died possessed of considerable property, and leaving five sons. One of them died leaving a widow, **B.** She brought a suit to recover her husband's share in **R. C.'s** estate, together with the profits thereon. The suit was conducted by **G. R.** A large amount became due to him for costs. To secure this, **B.** executed a bond and warrant of attorney to confess judgment. The suit failed. In order to obtain the means of bringing another suit, **B.**, by deed dated 4th April 1859, assigned her interest in the estate in the right of her husband, and all benefit to be derived from the suit to be instituted, to **G.**—one-half absolutely, the other in trust to retain thereout what he might advance to her for maintenance and for the costs of suit with interest at 12 per cent. and to pay her the residue. In November 1859, **G.**, by deed sub-assigned to **H. S.**, in consideration that **H. S.** should undertake the maintenance of **B.** and the management of the suit, retaining only five-sixteenths out of the eight-sixteenths assigned to him (**G.**) absolutely. On 19th August 1861, **B.** obtained a decree in the Supreme Court declaring her entitled to the accumulations on her husband's one-fifth share in the estate of his father, **R. C.**, and to all profits made on such accumulations since her husband's death. In September 1861, **G. R.** caused judgment to be entered on the bond and execution to be issued, and the Sheriff seized and was about to sell **B.'s** interest in the estate of her husband. Thereupon, **B.** being entirely without means, **P. S.**, brother of **H. S.**, paid off **G. R.**, and in consideration thereof took an assignment by deed dated 18th December 1861, in

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(c) WHAT CONSTITUTES LEGAL NECESSITY—continued.****Legal necessity—continued.**

the name of one **I. S.**, from **B.**, of five-eighths of the half share reserved to her by the deed of 4th April 1859, but subject to the assignment by that deed to **G.** On 20th December 1869, **R84,686** were paid into Court as **B.'s** husband's share of the accumulations on **R. C.'s** property at the date of his death, and **R1,55,255** as the profits made thereon since her husband's death. **P. S.** now sued for a declaration that the deed of 18th December 1861 was binding upon **B.** and the reversionary heirs, and for an order that the precise amount due to him be ascertained and paid to him out of the moneys paid into Court. At the trial he abandoned his claim against the **R84,686**, on the ground that he could not prove legal necessity on the part of **B.** Held, the deed could be supported only so far as it charged the profits made since **R. C.'s** death with the repayment of the **R12,500** advanced, with interest at 12 per cent. **P. S.** was entitled to have that amount paid out of the **R1,55,255** in Court. **PANNALAL SNAI v. BAKAL-SUNDARI DASI** . . . 6 B. L. R., 782

161. . . . *Litigation.*—*Reversioner.*—*Mitakshara law.*—**E.**, a Hindu widow, who had succeeded to the estate of her deceased husband, mortgaged a portion of it to **L.**, as security for the repayment of money which she borrowed from him for the purpose of suing for an estate to which her deceased husband had an alleged right of succession, which he had not, however, himself sought to enforce. This suit was dismissed. **E.** subsequently transferred her deceased husband's estate to his daughter **I. L.** sued **E.** and **I.** to enforce the mortgage made to him by **E.** by cancelment of such transfer. Held that the mere fact that the mortgaged property had been transferred to **I.** did not preclude her from contending, as next reversioner, that the mortgage of such property by **E.** was void for want of "legal necessity;" that, under the circumstances stated above, there was not any "legal necessity," within the meaning of the Hindu law, for such mortgage, and such suit not having been for the benefit of the estate of **E.'s** deceased husband, consequently such mortgage was not valid so far as the reversionary right of **I.** was concerned; that, however, **I.'s** right to the mortgaged property as transferee from **E.** was subject to such mortgage. The nature of a Hindu widow's estate in her deceased husband's immovable property, her power of alienation generally, and her power of alienation in particular for the purposes of litigation, discussed. *Hunoomasapersaud Pandey v. Babooes Munraj Koonersee*, 6 Moore's I. A., 393; *Collector of Masulipatam v. Narrainapah*, 8 Moore's I. A., 529; *Gross v. Amirtamayi Dasi*, 4 B. L. R., O. C., 1; *Phool Koer v. Daboo Pershad*, 12 W. R., 187; *Roy Mahkun Lall v. Stewart*, 18 W. R., 121; *Nagenderchunder Ghoss v. Kamines Dosses*, 11 Moore's I. A., 241; and *Baijun Doobay v. Brij Bhookun Lall Awusti*, L. R., 2 I. A., 275, referred to. **INDAR KUAR v. LALTA PRASAD SINGH**

[1 L. R., 4 All, 532]

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(c) WHAT CONSTITUTES LEGAL NECESSITY—continued.****Legal necessity—continued.**

162. ————— *Litigation, Expenses of.*—*Raising funds to carry on appeal to Privy Council.*—A judgment-debtor, who had been permitted to retain possession of disputed property pending an appeal to England on furnishing security for mesne profits and costs, having died, his widow offered her life-interest in his estate as such security. *Held* that as she was under no legal necessity to carry on the appeal to the Privy Council and did not do so for the benefit of the estate, she could not bind the estate as against the reversioner for the purpose of raising the necessary funds. *PHOOL KOER alias KUNHYA KOER v. DABHUPERSHAD* . . . **12 W. R., 187**

163. ————— *Legal expenses.*—*Maintenance.*—*Re-marriage of widow.*—Legal expenses incurred by a Hindu widow, in defending her life-estate in her husband's property, constitute such a charge on the property as to make a sale thereof by her binding as against the reversioners. Where a Hindu widow is re-married, or is living with another man, it does not necessarily follow that she would not be entitled to sell her deceased husband's estate for her maintenance. *AMJAD ALI v. MONIRAM KALITA* . . . **I. L. R., 12 Cal., 52**

164. ————— *Necessity to provide maintenance for herself.*—A Hindu widow cannot alienate for any purpose property entrusted to her solely that from its profits she may maintain herself. *SRETH GOBIN DASS v. RANCHOBE alias RUGHOBHER* . . . **3 N. W., 324**

165. ————— *Digging tank.*—The digging of a tank, though a meritorious act and a great convenience to the public, is not a legal necessity for which a widow can alienate property left to her for life only. *RUNJEET RAM KOOLAL v. MAHOMED WARIS* . . . **21 W. R., 49**

166. ————— *Consent of husband.*—*Declaration of legal necessity.*—A deed of gift of ancestral property not being valid under Hindu law, without the consent of all the heirs, a wife is not bound by her husband's consent to a deed of gift to their children. The wife and husband being in possession, not beneficially for themselves, but for their children, the wife's acquiescence is not to be presumed by being in possession. A mere declaration of necessity is not sufficient to justify a purchase from a Hindu widow. *GUNGAGOBIND BOSE v. DHUNNEE* . . . **1 W. R., 60**

167. ————— *Loan while administering estate of husband.*—Where a plaintiff alleged that *M.*, the deceased widow of *S.*, a Hindu, while administering the estate of her deceased husband, borrowed money from plaintiff for purposes binding on the estate, and executed a promissory note to secure the payment of the same; and that the first and second defendants, as reversionary heirs of *S.*, and the third defendant were in possession of the

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(c) WHAT CONSTITUTES LEGAL NECESSITY—continued.****Legal necessity—continued.**

estate of *S.*, and refused to pay the debt incurred by *M.*—*Held* that the plaintiff was properly rejected as disclosing no cause of action against the defendants. *GADGEPPA DESAI v. APAJI JIVANRAO*, **I. L. R., 8 Bom., 237**, approved. *Ramcoomar Mitter v. Ichamoyi Dasi*, **I. L. R., 6 Cal., 36**, dissented from. *RAMASAMI MUDALI v. SELLATTAMMAL* [**I. L. R., 4 Mad., 375**]

168. ————— *Loan for supplying necessities.*—Plaintiff sought to recover land sold by the first defendant, the widow of an undivided member of a Hindu family, and part of the consideration was the amount of a mortgage deed executed for the purpose of supplying the necessities of the husband of the first defendant. In special appeal a decree fastening the amount of the mortgage money upon the land was asked for. *Held* that such a decree ought not to be made, the plaintiff not having sought for that relief, and the suit having been so conducted that the genuineness of the mortgage instrument, though disputed, was treated as a subordinate matter. *MADAYA NAIKAN v. APPAYU NAIKAN* [**2 Mad., 394**]

169. ————— *Liability of adopted son or of the estate in his hands for a loan raised by his mother for the benefit of the estate.*—*H.*, a widow, who, in default of issue to her husband, was in possession of his deshgate inam, borrowed money from the plaintiff on an ordinary bond for the purpose of paying the Government assessment thereon. She subsequently adopted a son (the defendant), and died. The plaintiff sued the son to recover the money from him personally, and also sought to make the deshgate inam liable. *Held* that the plaintiff could not recover his debt either from the defendant personally or from the deshgate inam in his possession. His only remedy was against *H.'s* property (if any) in the hands of the defendant. *GADGEPPA DESAI v. APAJI JIVANRAO* [**I. L. R., 3 Bom., 237**]

(d) SETTING ASIDE ALIENATIONS, AND WASTE.

170. ————— *Suit to set aside alienation by widow as tenant for life.*—*Effect of petition as passing property.*—By a petition filed in 1830, *N.*, a Hindu, asked that certain property specified in a schedule to the petition which had up to date been in possession of himself and his ancestors, should be placed in the Collectorate book in the name of his daughter *D.*, and that on her decease her daughters and other heirs should be heirs. In 1837, *N.* acquired shares in a mouzah called *K.* He died in 1838, and the petition was subsequently held by the Privy Council to be a testamentary instrument. *D.* sold the shares in mouzah *K.*, and invested the proceeds in another mouzah. In a suit by a son of *D.'s* daughter against the purchasers to set aside the sale by *D.*, the Subordinate Judge held that he was bound, in the first instance, to repay the whole of the

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(d) SETTING ASIDE ALIENATIONS, AND WASTE—continued.**

Suit to set aside alienation by widow as tenant for life—continued.

purchase-money to the defendants. He further held that the after-acquired property passed by the petition. The High Court upheld the first finding of the Subordinate Judge, but expressed a doubt (it not being necessary to decide the point as there was no cross-appeal) whether the petition could pass after-acquired property. **SHENWAX RAM v. BHOWANI BUKSH SINGH** [3 C. L. R., 140]

171. ——— Suit to set aside alienation.—Validity of alienation.—Where a Hindu brought up a boy, and treating him as his son, purchased estates for, and in the name of, such son, but subsequently for some reason got his wife's name recorded in respect of such estates, *Held* that if the record of name in favour of the wife was effected during the minority of the son, it was invalid, or if otherwise, then the wife must be considered as having derived her title from the son and not from her husband, and in either case she was competent to transfer it to the son, and under such circumstances the transfer made by her was not illegal under the Hindu law. **NOWBUT RAI v. BHAGMANEE** . . . 2 Agra, 5

172. ——— Alienation in contemplation of adoption.—The power of a Hindu widow, with authority from her husband to adopt, to make *bond fide* alienations, which would be binding on the reversioners if no adoption took place, is not affected or curtailed by the fact that it is exercised in contemplation of adoption and in defeasance of the right of the son who is about to be adopted. **LAKSHMANA RAU v. LAKSHMIAMMAL** . . . I. L. R., 4 Mad., 160

173. ——— Alienation by conditional sale.—Right to question validity of sale.—A conditional sale is an alienation, the validity of which a reversioner to a Hindu widow is by Hindu law entitled to question. **ODIT NARAIN SINGH v. DHURM MAHATOON** . . . W. R., 1864, 263

174. ——— Sale without legal necessity.—Reversioners.—*R.*, a Hindu, had two daughters by his wife *K.* One daughter married *S.* and died in *K.*'s lifetime, leaving two sons, the defendants. The other daughter was alive at the date of suit. On the death of her husband, *K.* succeeded to his estate and sold some land to *S.* without adequate necessity. *S.* mortgaged this land to *T.* *Held*, in a suit by *T.* after the death of *S.* and *K.* against the defendants to enforce the terms of the mortgage, that the defendants were entitled to object to the validity of the sale to their father by *K.*, in their own right, in answer to *T.*'s claim. The restrictions on the father's power to alienate ancestral property are incidents of coparcenary, whereas the right to sell possessed by a widow is but a qualified power given for certain specified purposes over the reversion created by law in favour of the ultimate male heirs. **KARUPPA THEVAN v. ALAGU PILLAI** . . . I. L. R., 4 Mad., 152

175. ——— Form of alienation.—Sale or mortgage.—Necessity.—There is no rule of Hindu

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(d) SETTING ASIDE ALIENATIONS, AND WASTE—continued.****Form of alienation—continued.**

law which compels a widow alienating a portion of her late husband's property to have recourse to a mortgage instead of to a sale to raise funds for her maintenance. The question whether she has exceeded her powers or not depends upon the necessities of the case. **NARAKUMAR HALDAR v. BHABASUNDARI DEBI**

[3 B. L. R., A. C., 375]

176. ——— Suit by reversioners to set aside deed of sale.—Necessity.—Seeking larger part of estate than necessity justifies.—Sale where mortgage could suffice.—In a suit by reversioners to set aside a deed of sale by a Hindu widow of part of her husband's estate, on the ground that the money which it was necessary to raise could have been raised by other means, it was held that if the widow sold a larger portion of the estate than was necessary to raise the amount which the law authorised her to raise, the sale would not be absolutely void as against the reversioners, who could only set it aside by paying the amount which the widow was entitled to raise with interest. *Held* also, that if a widow elects to sell when it would be more beneficial to mortgage, the sale cannot be set aside as against the purchaser, if the widow and the purchaser are both acting honestly. **PHOOL CHUND LALL v. RUGHOOBUN SUDHAY**

[9 W. R., 107]

177. ——— Re-payment of purchase-money to set aside sale.—A sale by a Hindu widow of her husband's estate, under legal necessity, cannot be set aside upon payment of the amount which it was necessary for the widow to raise, or in the proportion which that sum bears to the amount for which the estate was sold. **SUGHERAM BEGUM v. JUDDOBUN SUDHAY** . . . 2 W. R., 284

178. ——— Re-payment of sum spent for legal necessity.—Suit to set aside mortgage.—Alienation by daughter.—Legal necessity.—The daughter of a Hindu, while in possession of the paternal estate, borrowed a large sum of money under a mortgage of a portion of the estate. Part only of the money borrowed was devoted by her to the relief of legal necessity. After her death, the next heir sued the mortgagee to recover the property mortgaged, and to set aside the mortgage deed. The Courts below gave a decree for possession to the plaintiff upon repayment of the amount actually spent in the relief of legal necessity. Such decree upheld on appeal. **LALIT PANDAY v. SIDDHAR DRO NARAIN**

[5 B. L. R., 176: 13 W. R., 457]

179. ——— Suit to set aside sale.—Sale for more than amount of necessity.—Ancestral debt.—Necessity.—*A.* died leaving *B.*, a grandson by a son deceased, *C.*, the widow of another son deceased, and *D.* and *E.*, sons, him surviving. All four held separate possession of their respective shares in the estate. *C.* sold her share for Rs95 to pay off a debt of *A.*'s of Rs670. *D.* and *E.* having waived their rights, *B.* sued as reversioner to set aside the sale

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(d) SETTING ASIDE ALIENATIONS, AND WASTE—continued.****Suit to set aside sale—continued.**

made by *C.* Held that *C.* did no wrong in selling her share to pay off the debt, and the mere fact that she sold it for more than the amount of the debt did not render the sale invalid. *LALA CHATNARAIN v. UBA KUNWARI* . . . 1 B. L. R., A. C., 201

180. ——— **Suit for rent by alienee of widow.**—*Suit for rent.*—*Title.*—*Possession by widow.*—In a suit for rent by a putnidar, who claimed under a lease granted to him by a Hindu widow whose husband had died leaving a will, which gave the widow no power to alienate the property,—*Held*, the suit was properly dismissed, and that there was no necessity for the Judge to enter into any question of possession by the widow. *BANKE MADHUB GHOSE v. THAKOOR DOSS MUNDUL*

[B. L. R., Sup. Vol., 588: 6 W. R., Act X, 71

TILLESUWER KOER v. ASMEKH KOER

[24 W. R., 101

181. ——— **Waste.**—*Reversioners.*—*Manager.*—Waste on the part of a Hindu widow in possession being proved, it is not competent to the Court to put the reversioner in possession, assigning maintenance to the widow. A manager should be appointed to the estate accountable to the Court. The reversioner may be appointed such manager. *MAHARANI v. NUNDOLAL MISSE*

[1 B. L. R., A. C., 27: 10 W. R., 78

182. ——— **Reversionary heirs.**—A conveyance by a Hindu widow, for other than allowable causes, of property which has descended to her from her husband, is not an act of waste which destroys the widow's estate and vests the property in the reversionary heirs, and the conveyance is binding during the widow's life. The reversionary heirs will not be precluded, even during the lifetime of the widow, from commencing a suit to declare that the conveyance was executed for causes not allowable, and is, therefore, not binding beyond the widow's life; nor will the reversionary heirs be deprived, during the widow's life, of their remedy against the grantee to prevent waste or destruction of the property, whether moveable or immoveable. *GOBINDMANI DAS v. SHAMLAL BYSAK. KALIKUMAR CHOWDHRY v. RAMDAS SHAHA. GAURHARI GUI v. PHARI DAS. MACHODRAM SEN v. GAURHARI GUI*

[B. L. R., Sup. Vol., 48: W. R., F. R., 165

LALLA CHUTTUB NARAIN v. WOOMA KOOWAREE

[8 W. R., 273

183. ——— **Attempt at false adoption.**—An attempt at a false adoption of a son is not an act of waste such as would render a widow liable to the penalty of absolute forfeiture of the property for the benefit of reversioners. *KOMUL MOHNE DOSSEE v. ALHAMMONEE DOSSEE*

[1 W. R., 256

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(d) SETTING ASIDE ALIENATIONS, AND WASTE—continued.****Waste—continued.**

184. ——— **Extravagance of widow.**—*Necessity, Proof of.*—Mere extravagance on the part of a Hindu widow will not affect the rights of one advancing money to her on the security of her husband's property if it be proved that the loans were advanced for necessary purposes. *MATA PRESHAD v. BHAGHEBUTHKE* . . . 2 N. W., 78

185. ——— **Reversioners.**—*Cause of action.*—If reversioners can make out a distinct case of waste by the widow and of positive fraud by her on her husband's estate and on themselves, they may bring a suit to have the estate protected and to have the widow removed from the management. Reversioners can maintain such a suit even if they are not the nearest reversioners, if the nearer reversioner is implicated in the alleged fraud or waste. A reversioner cannot, during the widow's lifetime, get a declaration that he, as next reversionary heir, is entitled to succeed to the property on her death. *SHAMA SOONDUREE CHOWDHRAIN v. JUMOMA CHOWDHRAIN* . . . 24 W. R., 86

186. ——— **Widow refusing to have anything to do with property.**—*Appointment of manager.*—A Hindu widow held her husband's property till within twelve years of the date of suit. At that time one of the defendants claimed the property as belonging to his own separate talook; and she thereupon gave it up, and ever since refused to enter on it. In a suit by the reversionary heir of the husband to have the title declared, and to obtain possession of the property,—*Held* that the possession of the defendant was adverse to the widow and reversioners; that the reversionary heirs, therefore, had a right to sue for a declaration of their title at any time within twelve years from the date of the adverse possession; that as the widow refused to have anything to do with the property, and the reversioners had no right to possession till after the death of the widow, the proper course for the Court to adopt was to appoint a manager to collect the assets of the estate, who should account for them to the Court; and the Court should hold them for the benefit of the reversionary heir. *RADHA MOHUN DHAR v. RAM DAS DEY*

[8 B. L. R., A. C., 362: 24 W. R., 86, note

See GUNESH DUTT v. LALL MUTTER KOER

[17 W. R., 11

187. ——— **Suit by reversioner to set aside deeds.**—A Hindu widow executed deeds of gift, in which her late husband's mother, the nearest reversioner, concurred. After the death of the widow, but in the lifetime of the mother, the next presumable reversioner sued to set aside the deeds and for possession. *Held* that the suit was good so far as it sought to set aside the deeds; and the mother having died before decree, that no objection could be taken to the suit on the ground

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(d) SETTING ASIDE ALIENATIONS, AND WASTE—continued.****Waste—continued.**

that the decree gave possession to the plaintiff.
GOLAB SINGH v. RAO KURUN SINGH. RAO KURUN SINGH v. MAHOMED FYZE ALI KHAN

[10 B. L. R., P. C., 1
 14 Moore's I. A., 176, 187]

188. ———— Reversioner or purchaser.—Allegation of waste.—Where moneys deposited in Court had been drawn out by a party on the admission of the opposite party, and the latter sued on the allegation that, as the former had been declared by a decree of Court to have only a life-interest in the property in dispute, the money which represented that property ought to be so tied up as to prevent defendant from wasting it, it was held (following a decision of the Privy Council in *Hurry-doss Dutt v. Uppoornak Dosses*, 6 Moore's I. A., 433), that it was not sufficient to allege that defendant was committing waste; the suit would not lie, unless some act of waste threatening the corpus of the property were proved. **BUDRUM v. FUZLOOR RUHMAN 9 W. R., 362**

189. ———— Reversioners.

—Payment of money out of Court to Hindu widow.—A decree was made in favour of K., a Hindu widow, in a suit brought by her against B. C., which declared that she was entitled to one-fifth share of the accumulations of the estate of the father of her husband from his death to the death of her husband, to be held by her as a Hindu widow, and to one-fifth of the subsequent accumulations absolutely. Execution of the decree was taken out, and the sum to which K. was declared entitled was paid into Court by B. C. in March 1869. **MACPHERSON, J.**, in delivering judgment, expressed a doubt whether the suit was brought for the benefit of the plaintiff, and stated that he would consider any application to protect any rights the reversionary heirs might have in the amount received by the plaintiff. No steps, however, were taken by B. C., by suit or otherwise, to protect the interests of the reversionary heirs in the sum paid into Court, but on K.'s applying in March 1871, to have the money paid to her out of Court, B. C., on behalf of himself as reversionary heir, filed an affidavit in opposition to K.'s application, charging her on information and belief with leading an immoral life, and of having assigned half the amount in Court to H. S., and expressing his apprehension of waste, and that if the money were allowed to be taken out of Court it would be lost to the reversioners. Held that K. was entitled to have the money paid out of Court to her. **BISWANATH CHANDRA v. KHANTOMANI DASII** [6 B. L. R., 747]

190. ———— Suit by reversioners to set aside alienation.—Necessity.

—A Hindu died in 1808, leaving five sons, and possessed of considerable property. In 1813, the four younger sons obtained a decree for partition against their elder brother, but themselves continued to live together as a joint Hindu family, and so did their widows after their death. After the death of the widow of one of the

HINDU LAW—ALIENATION—continued.**5. ALIENATION BY WIDOW—continued.****(d) SETTING ASIDE ALIENATIONS, AND WASTE—continued.****Waste—continued.**

brothers, J. D., the widow of another brother brought a suit for partition; but subsequently, by the consent of all parties, the matters in dispute were referred to arbitration, and an award was made as follows: "Selling their (the widows') respective ryoti land, bati, or house, they will pay the costs of their respective vakeels; in that way the land, bati, or house that shall remain, with the proceeds belonging to their respective shares, the raiment and food of C. D. (the widow of another brother) and J. D. will be supplied during their lives; they will be unable to make a gift, sale, &c.; should the proceeds of the land, bati, or house not be sufficient for their food and raiment and for the purity of their respective husbands in a suitable manner, the jetta dharma, then showing good reason, regulation, conformably to the dharma shastra what is expedient as necessary according to usage, informing the other shareholders, they shall be able to sell the ryoti land, bati, or house of their respective shares." This award, which directed a partition according to the terms of a chinitnamah, or written description of the land, which was executed by all the parties, was made a rule of Court on 26th July 1858. J. D. took possession of her husband's share of the estate, some portion of which she alienated. In a suit brought by the reversionary heirs against J. D. and the purchasers of what she had sold, it was alleged that the alienations were without necessity and contrary to the award, and it was prayed that they might be declared void as against the reversionary heirs, and that J. D. might be restrained from further alienations. Held that the suit could be maintained in the lifetime of J. D. As there was no waste proved, the prayer for an injunction to restrain further alienation was refused. **KAMIKHAPRASAD ROY v. JAGADAMBA DASII 5 B. L. R., 508**

HINDU LAW—CONTRACT.

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1. ASSIGNMENT OF CONTRACT	2210
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See VENDOR AND PURCHASER—CYBAT EMPTOR. 2 Bom., 430: 2nd Ed., 408

1. ASSIGNMENT OF CONTRACT.

1. ———— Right of assignee to sue.—By Hindu law, the assignee of a debt can sue the debtor

HINDU LAW—CONTRACT—continued.**1. ASSIGNMENT OF CONTRACT—continued.****Right of assignee to sue—continued.**

in his own name. *KADARBACHA SAHIB v. RANGASWAMI NAYAK* 1 *Mad.*, 150

2. ——— *Small Cause Court, Madras.*—According to Hindu law, not only is the beneficial interest in the subject-matter of the contract but the contract itself is assignable. The assignee therefore may sue in his or her own name. This doctrine is applicable to suits brought in the Madras Small Cause Courts. *VENBAKUM SOMAYAGES JANAKES AMMAL v. MOONESWAMY CHETTI* [4 *Mad.*, 176

2. BILLS OF EXCHANGE.

3. ——— *Notice of dishonour.—Suits between endorser and endorsee.—Semble.*—Notice of dishonour, as between endorsee and endorser on bill transactions among Hindus, is not necessary, unless by want of it the endorser would be prejudiced. *SOMARINULL v. BHAIRO DAS JOHUREY* . 7 *B. L. R.*, 431

GOPAL DAS v. ALI 3 *B. L. R.*, A. C., 198

S. C. after remand . ALI v. GOPAL DAS [13 *W. R.*, 420

See ANUNT RAM AGURWALLA v. NUTHALL [21 *W. R.*, 62

4. ——— *Evidence of custom.—Quere.*—Whether notice of dishonour of a bill of exchange is necessary as between Hindus. *Semble.*—It is a point to be determined by evidence of custom. *SUMBOONATH GHOSH v. JUDDOONATH CHATTERJEE* *Cor.*, 88

See FIGUE v. GOLAB RAM 1 *W. R.*, 75

5. ——— *Omission to give notice.—Discharge of drawer.*—The omission by the holder to give notice of dishonour discharges the drawer of a hundi from liability. *JESTUN LALL v. SHEO CHURN* 2 *W. R.*, 214

6. ——— *Rules of English law.*—Although the strict rules of English law as to bills are not applicable to hundis, notice of dishonour or non-payment must be given within reasonable time to enable the drawer or endorser to protect himself against the claims of subsequent endorsers. *TULSHI SAHU v. NURSINGRAM* 12 *C. L. R.*, 333

3. BREACH OF CONTRACT.

7. ——— *Action for breach of contract.—Act XIV of 1840.*—Act XIV of 1840 did not apply to contracts between Hindus. By Hindu law a purchaser may recover in an action for breach of contract to deliver goods, not only double the earnest-money, but also damages for the non-delivery. *ALVAR CHETTI v. VAIDILANGA CHETTI* . 1 *Mad.*, 9

4. GRANT OF LAND.

8. ——— *Verbal grant of land followed by possession.—Validity of transfer.*—By the Hindu law a verbal grant of real estate is good

HINDU LAW—CONTRACT—continued.**4. GRANT OF LAND—continued.****Verbal grant of land followed by possession—continued.**

if followed by possession by the grantee. The grantors of real estate were Hindus and the grantees the East India Company. *Held* that, as the Hindu law which governed the grantor's rights allowed a verbal grant, the law of the grantees regulated the matter, and as there was possession under the grant by the grantees, the grant was valid. *DOE v. SKEE KRISTO v. EAST INDIA COMPANY*. 6 *Moore's L. A.*, 267

5. HUSBAND AND WIFE.

9. ——— *Liability of wife for debt contracted during coverture.—Widow.—Remarriage.—Liability of widow who has remarried for debt contracted during widowhood.—Stridhan.*—A Hindu woman who was a widow when she executed a money bond, but has subsequently remarried, is personally liable for the debt. Her liability is not restricted merely to her stridhan. *NAHALCHAND v. BAI SHIVA* 1 *L. R.*, 6 *Bom.*, 470

10. ——— *Liability of wife, Extent of.—Stridhan.*—A Hindu married woman who contracts jointly with her husband is liable to the extent of her stridhan only and not personally. *NABOTAM v. NANKA* 1 *L. R.*, 6 *Bom.*, 473

11. ——— *Liability of wife for necessities.—Presumption of agency for husband.*—In case of husband and wife living together, the presumption is that the wife is the husband's agent for contracting debts for the necessities of the family. *Per BITTLESTON, J.*—But by Hindu law perhaps this presumption is not so strong as it is by English. *VERASWAMI CHETTI v. APPASWAMI CHETTI* [1 *Mad.*, 375

12. ——— *Liability of wife for debt.—Wife voluntarily separated from husband.*—Under the Hindu law a wife who has voluntarily separated from her husband, without any circumstances justifying her separation, is liable for debts contracted by her (even for necessities), although without her husband's consent; but her liability is limited to the extent of any stridhan she may have. *Bom. Sp. Ap.*, 261 of 1881 (decided 2nd Feb. 1883), and *Bom. Sp. Ap.*, 461 of 1869 (decided 17th January 1870), approved and followed. *NATHUBHAI BHAILAL v. JAYHAR RAJJI* 1 *L. R.*, 1 *Bom.*, 131

13. ——— *Hindu married woman, Effect of joint and separate contract by.—Stridhan.—Separate property.*—A contract entered into by a Hindu married woman, jointly with her husband and separately for herself, must, in the absence of special circumstances, be considered as entered into with reference to her stridhan, which is analogous to a woman's separate property in England. *GOVINDJI KHEMJI v. LAKHIMDAS NATHURHOT* [1 *L. R.*, 4 *Bom.*, 313

14. ——— *Liability of husband for wife's debts.*—A husband (Hindu) is not liable for

HINDU LAW—CONTRACT—continued.**5. HUSBAND AND WIFE—continued.****Liability of husband for wife's debts—continued.**

a debt contracted by his wife, except where it has been contracted by his express authority, or under circumstances of such pressing necessity that his authority may be implied. *PUSI v. MAHADEO PRASAD* I. L. R., 3 All., 122

15. ——— Coverture, Effect of.—English law.—The proposition that everything acquired by a woman during coverture is the property of her husband has no foundation in Hindu law. *RAMASAMI PADNITYACHI v. VIRASAMI PADNITYACHI* [3 Mad., 272

6. LIEN.

16. ——— Deposit of title deeds of land in Island of Bombay.—Creation of lien.—A lien created by verbal contract and deposit of title deeds of immoveable property in the Island of Bombay by a Hindu in favour of a Hindu, upheld. *JIVANDAS KESHAVJI v. FRAMJI NANABHAI* [7 Bom., O. C., 45

7. MONEY LENT.

17. ——— Demand, Money payable on.—Limitation.—Cause of action.—Where a sum was lent at interest, the principal to be payable on demand.—*Held per NORMAN, J.*, that by Hindu law a demand would be necessary, and limitation would run from the date of the demand. *BRAMMAMAYI DAS v. ANHAI CHARAN CHOWDEY* [7 B. L. R., 499: 16 W. R., 164

Contra, *PARBATHI CHARAN MOOKERJEE v. RAM-NARAYAN MATILAL* [5 B. L. R., 396: 16 W. R., 164, note

8. MORTGAGE.

18. ——— Mortgage of future crops.—Validity of mortgage.—Quere.—As to the validity in Hindu law of a mortgage of future crops. *KEDARI SING RANU v. ATMARAMBHAT* . 3 Bom., A. C., 11

19. ——— Mortgage without possession.—Validity of mortgage.—A mortgage without possession is not by Hindu law absolutely invalid, but is binding between the mortgagor and mortgagee. *CHINTAMAN BHASKAR v. SHIVRAM HARI* [9 Bom., 304

See *KRISHNAJI NARAYAN v. GOVIND BHASKAR* [9 Bom., 275

20. ——— Law in Gujerat.—Priority.—Registration.—Notice.—The rule of Hindu law that a mortgage with possession takes precedence of a mortgage of a prior date but unaccompanied by possession, does not apply to Guzerat. Where in Guzerat the defendant, a puisne mortgagee in possession, had notice of plaintiff's prior mortgage, the defendant was held not entitled to claim the benefit of the above rule of Hindu law. *Registra-*

HINDU LAW—CONTRACT—continued.**8. MORTGAGE—continued.****Mortgage without possession—continued.**

tion could not of itself alter this rule of Hindu law except so far as effect may be given to it by statute, and registration secures the same object which the Hindu law intended to secure by requiring possession, *viz.*, notice to subsequent incumbrancers of the existence of a prior incumbrancer. *ITCHARAM DAYARAM v. RAJJI JAGA* 11 Bom., 41

9. NECESSARIES.

21. ——— Power of widow entitled to maintenance to bind heir for necessities.—There is no rule of Hindu law which recognises any authority in a widow entitled only to maintenance to make contracts for necessary supplies binding upon the heir in possession of the family property and liable to maintain her. *RAMASAMY AIYAN v. MINAKSHI AMMAL* . 2 Mad., 409

10. PLEDGE.

22. ——— Accidental destruction of property pledged.—By the Hindu as well as by the English law, a creditor in whose hands a pledge has accidentally perished is notwithstanding entitled to recover his debt in the absence of an agreement to the contrary. *VITHORA VALAD UKBA v. CHOTA LAL TUKARAM* . 7 Bom., A. C., 116

11. PRINCIPAL AND SURETY.

23. ——— Suit against surety.—Principal not sued.—A suit may be maintained against a surety, according to Hindu law, although the principal debtor has not been sued. *TOTAKOT SHANGUNNI MENON v. KURUSINGAL KAKU VARID* [4 Mad., 180

12. PROMISSORY NOTE.

24. ——— Consideration.—Document not importing consideration.—In a suit under the Bills of Exchange Act to recover Rs. 200 on a promissory note, *held by PHAROOK, C. J.*, that the suit being between two Hindus must be decided by Hindu law. By Hindu law a promissory note does not import consideration, and, therefore, where it was proved that the defendant actually received only Rs. 700, that sum was all the plaintiff was allowed to recover. *RAMLAL MOOKERJEE v. HARAN CHANDRA DHAR* [3 B. L. R., O. C., 130

13. SALE.

25. ——— Sale of expectancy.—Validity of sale.—Quere.—Whether under Hindu law an expectancy may be the subject of a valid sale. *DOOLI CHAND v. BIRJI BOOKUN LAL AWASTHI* [10 C. L. R., 61: 6 C. L. R., 528

14. TRANSFER OF PROPERTY.

26. ——— Exchange of land.—Necessity of written exchange.—By Hindu law an exchange of

HINDU LAW—CONTRACT—continued.**14. TRANSFER OF PROPERTY—continued.****Exchange of land—continued.**

lands followed by possession need not be evidenced by writing. *Semble*.—In no case does the Hindu law appear absolutely to require writing, though, as evidence, it regards and inculcates a writing as of additional force and value. *MANTENA RAYAPARAJ v. CHEKURI VENKATARAJ* . . . 1 Mad., 100

CRINIYA SAMMAL v. VIJAYAMMAL . . . 2 Mad., 37

PALAMYAPPA CHETTI v. ARUMGAM CHETTI . . . 2 Mad., 26

KRISHNA v. RAYAPPA SHANBHAGA . . . 4 Mad., 98

ROOKHO v. MADHO DOSS . . . 1 N. W., Ed. 1873, 59

27. ——— Mode of transfer.—*Verbal transfer of property*.—No special mode of transfer is required by the Hindu law; even a verbal transfer is sufficient. *HURPURSHAD v. SHEO DYAL. RAM SAHOY v. SHEO DYAL. BALMOKAND v. SHEO DYAL. RAM SAHOY v. BALMOKAND* . . . [L. R., 3 I. A., 259: 26 W. R., 55]

15. VERBAL CONTRACTS.

28. ——— Verbal contract, Validity of.—*Registration Act*.—There is nothing in the Registration Act which renders a verbal contract between Hindus invalid or inoperative. *HURRISH CHUNDER CHOWDREY v. RAJENDER KISHORE ROY CHOWDREY* . . . 18 W. R., 293

HINDU LAW—CUSTOM.

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[I. L. R., 9 Mad., 44, 148]

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[I. L. R., 8 Calc., 199]

See HINDU LAW—ENDOWMENT—CREATION OF ENDOWMENT.

[1 Ind. Jur., N. S., 36]

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See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[I. L. R., 1 Mad., 235]

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT.

[I. L. R., 2 Calc., 365]

See HINDU LAW—INHERITANCE.

[9 B. L. R., 274, 308, note

12 B. L. R., 396

I. L. R., 4 Calc., 744

I. L. R., 2 Mad., 286]

See HINDU LAW—MARRIAGE—DISSOLUTION OF MARRIAGE.

[I. L. R., 3 Calc., 305]

See HINDU LAW—PARTITION—RIGHT TO PARTITION—SON.

[I. L. R., 10 Bom., 528]

See CASES UNDER MALABAR LAW—CUSTOM.

1. GENERALLY.

1. ——— Nature of Custom.—*Requisites of custom*.—A custom is a rule which in a particular family or a particular district has from long usage obtained the force of law. It must be ancient, certain, and reasonable, and being in derogation of the general rules of law must be construed strictly. *HURPURSHAD v. SHEO DYAL; RAM SAHOY v. SHEO DYAL; BALMOKUND v. SHEO DYAL; and RAM SAHOY v. BALMOKUND* I. L. R., 3 I. A., 259: 26 W. R., 55

2. ——— Origin and force of customary law.—The question of the origin and binding force of customary law discussed, and the authorities upon the subject cited and commented upon. *TARA CHAND v. REEB RAM* . . . 3 Mad., 50

3. ——— Operation of custom.—*Custom not judicially recognised, Authority of.*—A custom which has never been judicially recognised cannot prevail against distinct authority. *NARASAMAL v. BALARAMA CHARLU* . . . 1 Mad., 420

4. ——— Usage different from normal law and custom.—*Ous of proving usage.*—When amongst Hindus (and Jains are Hindu dissenters) some custom different from the normal Hindu law and usage of the country in which the property is located, and the parties resident, is alleged to exist, the burden of establishing its antiquity and invariability is placed on the party averring its existence, and it should be proved by clear and unambiguous evidence above suspicion. Custom of adoption not in ordinary way set up. *BHAGVANDAS TEJMAL v. RAJMAL alias HIRALAL LACHIMANDAS* . 10 Bom., 241

2. ADOPTION.

5. ——— Custom not allowing adoption, governing a family not subject to Hindu law.—*Construction of gift.*—*Burden of proof.*—*Inheritance.*—A family in Bengal, affecting to be Hindu, but not Hindu by descent and origin, may be governed by customs at variance with Hindu

HINDU LAW—CUSTOM—continued.**2. ADOPTION—continued.**

Custom not allowing adoption, governing a family not subject to Hindu law—continued.

law. A family took its origin in a tribe not Hindu, and its customs differed from Hindu customs. The question having arisen whether succession in virtue of adoption was consistent with, or was contrary to, the customs of the family,—*Held* first, that, with regard to the origin and history of the family, the point for inquiry was not whether the general Hindu law was, in this case, modified by a family custom forbidding adoption, but was whether, with respect to inheritance, the family was governed by Hindu law, or by customs not allowing an adopted son to inherit; secondly, upon the evidence that this family had retained, and was governed by, customs at variance with Hindu law, and that, whatever Hindu customs might have been introduced into it, the custom of succession upon adoption had not. Whether, if the family had been shown to be Hindu, out and out, save only special customs, the evidence would have been sufficient to prove a special custom was not the question. *Held* also, in reference to the burden of proof that, in a suit brought to maintain the plaintiff's title as heir against a defendant, who relied upon an adoption as defeating the title of the plaintiff, the burden of proving the adoption to be permitted by the family custom was upon those who alleged it to be so; whereas, if the family had been generally governed by Hindu law, the onus would have been on those who alleged the exclusion of the right to adopt. *Rajah Bishnath Singh v. Ram Churn Majumdar, S. D. A., 1850, p. 20*, referred to, as showing that even in a Hindu family there might be a custom which barred inheritance by adoption. *FANINDRA DEB RAIKAT v. RAJESWAR DAS*

[I. L. R., 11 Cal., 463
L. R., 12 I. A., 72]

3. AFFILIATION OF SON (ILLATAM).

6. ——— Status of affiliated son.—Illatam or affiliation of a son.—Districts of Bellary and Kurnool.—The custom of illatam (affiliation of a son-in-law) obtains among the Mototi Kapu or Reddi caste in the districts of Bellary and Kurnool. He who has at the time no son, although he may have more than one daughter, and whether or not he is hopeless of having male issue, may exercise the right of taking an illatam son-in-law. For the purposes of succession the illatam son-in-law stands in the place of a son, and in competition with natural-born sons takes an equal share. *Quare*,—(1) Whether a father with a son living is entitled to exercise the right; (2) If the father is dead, whether the power may be exercised by a surviving paternal grandfather; and (3) whether the affiliation is effected by the introduction into the family or requires for its completion marriage with a daughter. (4) Whether the affiliation is analogous to Hindu adoption, except in so far that the illatam is regarded as member of the family into which he is admitted. (5) Whether the illatam can demand partition. *HANUMANTANMA v. RAMI REDDI*

[I. L. R., 4 Mad., 272]

HINDU LAW—CUSTOM—continued.**3. AFFILIATION OF SON (ILLATAM)—continued.**

Status of affiliated son—continued.

7. ——— Rights of succession in his natural family.—Under the custom of illatam (affiliation of a son-in-law) which obtains amongst the Reddis or Pedda Kapu caste of Vellore, the illatam son-in-law does not thereby lose his rights of succession to the estate of his natural father's divided brother. *BALARAMI REDDI v. PERA REDDI*
[I. L. R., 6 Mad., 267]

4. APPOINTMENT OF DAUGHTER.

8. ——— Power to appoint daughter.
—*Onus of proof.—Delegation of power.*—The custom of Hindu law, under which a father, in default of male issue, might appoint a daughter to be as a son, or appoint her to raise a son for him, if not obsolete, as appears to be the opinion of the text-writers, is one which in modern times does not seem to have been brought under the consideration of the Courts of Justice in India. Assuming the custom to exist, inasmuch as it breaks in upon the general rules of succession, whoever claims by virtue of it to succeed as heir, must bring himself clearly within it. There seems to be no sufficient authority for holding that a father may delegate the power to appoint. *JIBNATH SINGH v. COURT OF WARDS* . 15 B. L. R., 180
[23 W. R., 409; L. R., 2 I. A., 163]

Affirming case in High Court

[5 B. L. R., 442; 14 W. R., 117]

5. ASSAM, LAW IN.

9. ——— Similarity to Bengal law.—Absence of proof of custom.—In the absence of any proof or custom to the contrary, the Hindu law in Assam is similar to that prevalent in Bengal. *DEPO DABBA v. GOBINDO DEB* 11 B. L. R., 181, note
[18 W. R., 42]

6. DISHERISON.

10. ——— Disherison in favour of son-in-law.—Reddicaste.—Illegal custom.—The custom of the Reddi caste, according to which a father-in-law may disinherit his heir in favour of a son-in-law, is bad. *TATUMANA REDDI v. PERUMAL CHETTI*
[1 Mad., 51]

7. ENDOWMENTS.

11. ——— Principle to be observed in dealing with Hindu endowments.—Evidence of custom.—The important principle to be observed by the Courts in dealing with the constitution and rules of religious brotherhoods attached to Hindu temples is to ascertain, if possible, the special laws and usages governing the particular community whose affairs have become the subject of litigation and to be guided by them. The custom and practice in such matters is to be proved by testimony. A zemindar claiming a customary right to grant confirmation of the election of a mohunt must

HINDU LAW—CUSTOM—continued.**7. ENDOWMENTS—continued.****Principle to be observed in dealing with Hindu endowments—continued.**

prove the custom; an acknowledgment, taken in troubled times from the guardian of an infant mohunt, of a zemindari's customary right to control and remove the mohunt, is entitled to little, if any, weight as evidence of the custom. *MUTTU RAMALINGA SETUPATI (ZEMINDAR OF RAMNAD) v. PERIANAYAGUM PILLAI*. L. R., 1 I. A., 209

8. FAMILY, MANAGEMENT OF.

12. ——— Right to manage family.—*Family compact, Power of revocation of.—Aliyasantana law.—Yajaman.*—The question whether, according to the Aliyasantana usage obtaining in South Canara, the senior member, male or female, or only the senior female, is the *de jure* yajaman (manager) of the family, is not concluded by authority and cannot be determined without evidence of usage. By a family compact (between all the members of an Aliyasantana family) in settlement of disputes in the family, it was agreed that the senior male for his life should enjoy the possession of the family land and protect the females. *Held* that the senior female, assuming that she was *de jure* yajaman, could not arbitrarily revoke this arrangement. *DEVU v. DEVI*

[I. L. R., 8 Mad., 353]

9. IMMORAL CUSTOMS.

13. ——— Usages among dancing girls (nalkins).—Usage as a source of law.—Functions of Courts of Law and of the Legislature in giving effect to usage.—Judicial decisions giving effect to usage.—Although the Courts in India are bound by charter to recognise the "usages of the Gentus," they are not limited to the sole sense of the word "usage," which shuts out all amelioration. The practices of an abandoned class are, no doubt, a usage in the sense of a tolerably uniform series of acts, but they do not, therefore, spring from a consciousness of compulsion, but rather from mere habit, imitation, and ignorance. Such usage is not a law, for over it presides the higher usage of the community at large from whose approval it must have derived any conceivable original validity, and in opposition to which it cannot subsist; and as the community comes to recognise certain principles as essential to the common welfare, it will no longer lend its sanction to sectional practices at variance with the principles thus recognised. It is only according to the standards of the Hindu law that a usage has coercive force amongst Hindus; and what the Hindu law is, must, for the purposes of secular justice, depend on the general sense of the Hindu community. Although at one time in India the existence of companies of temple women may have been thought not so repugnant to the essential principles of the Vedic Code as to prevent their recognition as a source of law for themselves, it is not so at present. The popular sentiment would now no longer give validity to a usage of adoption among prostitutes, which devotes children, while still infants, to a life

HINDU LAW—CUSTOM—continued.**9. IMMORAL CUSTOMS—continued.****Usages among dancing girls (nalkins)—continued.**

of infamy. The whole constitution of the class of courtesans would, it is certain, be now regarded by the great mass of the Hindu community as essentially vicious. The laws or rules by which such an association endeavours to make itself and its mischievous influence perpetual, would be deemed directly opposed to "the laws of God," and the usage itself, therefore, not as valid and coercive like a law, but as essentially invalid on account of its contradiction of the law. A contrary opinion, if shown to have been held and acted on in a time gone by, would unhesitatingly be referred to error, and a practice founded on error and misconception does not by repetition become a customary law. A custom, in order not to constitute it such, but to give it coercive effect in particular instances, needs the sanction of the sovereign power waiting on the judgment of a Court. It is the function of a Judge, as a witness and as an expositor, to give a clear definition of the custom, usage, or rule as to which the opinion of the community has arrived at the requisite degree of maturity. It is the function of the State to enforce it when it is ascertained and pronounced upon by the Courts of law. Judicial decisions by which customs in India have been recognised are not to be regarded in precisely the same way as judicial decisions with reference to customs in England. In England what the Courts have definitely propounded, becomes by that very process a part of the common law, that is, of the law deriving its force from the custom of the realm or of the whole community. But in India it is usage, as such, to which the Courts are commanded to give effect. A custom, however, may be adopted and abandoned, and its recognition at a particular stage, by the Courts, as a usage, cannot prevent this action of the class or community. If the usage is variable at the will of the community it must be enforced in its slowly changing phases, or else the behest of the sovereign will eventually be defeated. As the mind of the community becomes enlightened, its legal convictions will change, and this will constitute a change in its common law as that law must from time to time be recognised and recorded in the Courts. *MATHURA NAIKIN v. ESH NAIKIN*

[I. L. R., 4 Bom., 545]

14. ——— Immoral custom, Suit to declare existence of.—Public policy, Custom contrary to.—In a suit by the dancing girls of a temple claiming to have by custom a veto upon the introduction of any new dancing girls into the service of that temple, and praying for an inquiry as to whether the Dharmakarta of the temple was a fit and proper person to hold that office,—*Held*, dismissing the appeal, that, assuming that plaintiffs established that, by the custom of the pagoda, they had the rights they claimed, and that the custom in some respects fulfilled the requisites of a valid custom, the Court could not shut its eyes to the fact that by making the declaration prayed for it would be recognising an immoral custom, *vis.*, for an association of women to enjoy a monopoly of the gains of prostitu-

HINDU LAW—CUSTOM—continued.**9. IMMORAL CUSTOMS—continued.****Usages among dancing girls (nalkins)—continued.**

tion, a right which no Court could countenance.
CHINNA UMMAYI v. TEGARAI CHETTI

[I. L. R., 1 Mad., 168]

15. ——— Immoral custom, Suit to declare existence of.—Hereditary office with endowments or emoluments attached, Suit to establish right to.—The suit was brought by a dancing girl to establish her right to the mirasi of dancing girls in a certain pagoda and to be put in possession of the said mirasi with the honours and perquisites attached thereto as set forth in schedules to the plaint annexed. The defendants denied the claim. The District Munsif, finding that the claim had been established, decreed for plaintiff, but, on appeal by the first defendant, the District Judge dismissed the suit on the authority of *Chinna Ummayi v. Tegarai Chetti*, I. L. R., 1 Mad., 168. On second appeal,—*Held* that the present case was distinguishable from that of *Chinna Ummayi v. Tegarai Chetti*, in that there was no allegation in that case of any endowments attached to the office. That in this case the question of the existence of a hereditary office with endowments or emoluments attached to it ought to be inquired into, as that would materially affect the question of whether plaintiff had sustained injury by the interference of the first defendant. **KAMALAM v. SADAGOPI SAMI**. I. L. R., 1 Mad., 356

16. ——— Marriage by permission of caste without divorce.—Natra marriage.—Immoral custom.—A custom which authorises a woman to contract a natra marriage without a divorce, on payment of a certain sum to the caste to which she belongs, is an immoral custom, and one which should not be judicially recognised. **URI v. HATHI LALA**
[7 Bom., A. C., 183]

17. ——— Custom recognising heirship in illegitimate son.—Son by adulterous intercourse.—A custom recognising a right of heirship in an illegitimate son by an adulterous intercourse, would be bad. **NARAYAN BHARTHI v. LAVING BHARTHI**. I. L. R., 2 Bom., 140

10. IMPARTIBILITY.

18. ——— Impartible estate.—Partition, Right to.—A custom of impartibility must be strictly proved in order to control the operation of the ordinary Hindu law of succession. The fact that an estate has not been partitioned for six or seven generations does not deprive the members of the family to which it jointly belongs of their right to partition. **DUREYAO SINGH v. DARI SINGH**
[13 B. L. R., 165: 16 W. R., 142
I. R., 1 I. A., 1]

19. ——— Custom as to collateral succession.—That an estate is impartible does not imply that it is separate, and so to be governed by the law applicable to separate succession. Whether the general status of a Hindu family be

HINDU LAW—CUSTOM—continued.**10. IMPARTIBILITY—continued.****Impartible estate—continued.**

joint, or divided, property which is joint will follow one, and property which is separate will follow another, course of succession. Since in documents between Hindus and in the Mitakshara itself it is not unusual to find the leading members of a class alone mentioned when it is intended to comprehend the whole class, a written statement of a family custom, whereby an impartible estate passes in the event of the holder dying without issue to his younger brother or his eldest son, need not be construed as limiting the collateral succession to the two cases named, but as providing generally that on failure of the direct male line, the nearest male heir in the collateral line shall succeed. **CHINTAMUN SINGH v. NOWLUKHO KONWARI**

[I. L. R., 1 Calc., 158: 24 W. R., 255
I. R., 2 I. A., 263]

Reversing the decision of the High Court in **NATUKHEE KOBRI v. CHOWDHRY CHITNAMUN SINGH**. 20 W. R., 247

20. ——— Mitakshara law, Custom inconsistent with.—B. S., the father of the plaintiff, who was in possession of an estate in Lohardugga, which had been granted to his ancestor by the Raja of Chota Nagpore, was, on the 10th December 1867, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be forfeited to Government. On the 16th April 1868 B. S., having been arrested, was tried and convicted on a charge of rebellion, and sentenced to death. The sentence was carried out on the 21st April 1868, and an order was made on the same day by the Deputy Commissioner for the confiscation of his property. On the 1st April 1872, a suit was instituted by the plaintiff, then a minor, to recover possession of the estate of his father B. S. In his plaint he alleged that the estate was granted to the ancestor of B. S. for his maintenance, and was, by the terms of the grant, to devolve on the death of the original grantee on the nearest male heir, and so on in perpetuity; and that no holder had any interest beyond his own life, and had no power of alienation. In his written statement it was alleged that the descent of the estate was governed by Mitakshara law, modified by the usage and custom of the family, by which the estate was impartible and descendible, according to the law of primogeniture, on the male heirs of the original grantee; and that, by the Mitakshara law so modified, the plaintiff became on his birth co-owner with his father in the estate, and on his father's death became entitled to it, notwithstanding the sentence of confiscation pronounced against B. S. *Held*, on the case made by the plaint, that the estate was not shown to be inalienable: the fact that the grant was for maintenance, and to the heirs male of the original grantee, would not render it so. *Held*, on the case made in the written statement, that the Mitakshara law did not apply to the case: that law, by which each son has by birth a property in the paternal or ancestral estate, is inconsistent with the custom that the estate was impartible and descended

HINDU LAW—CUSTOM—continued.**10. IMPARTIBILITY—continued.****Impartible estate—continued.**

to the eldest son. **KAPILNATH SARAI DEO v. GOVERNMENT**

[13 B. L. R., 445; S. C. 22 W. R., 17]

21. ——— Presumption as to partibility.—Burden of proof.—Deshgat vatan held by desai.—In a suit for the partition of part of a deshgat vatan, brought by the younger brothers of a joint Hindu family against their eldest brother, the desai, the defence was that the vatan was held by him as an impartible inheritance, subject to a right by custom that a brother should receive maintenance out of the income derived from it. *Held* that there was no such general presumption in favour of the impartibility of estates of this kind as to shift the burden of proof, which was upon the desai to show that the vatan had, contrary to the general Hindu law, been inherited by him alone. It was for the desai to show, by evidence of the nature of the tenure of the vatan, that it was impartible, or to show, by evidence of family custom, or of district, i.e., local, custom, that impartibility attached to it, such evidence being strong enough to rebut the presumption of the prevalence of the general Hindu law. Where the defendant in a suit for the partition of a deshgat vatan held the hereditary office of desai, and the vatan was properly appertaining to the office, the decree for partition was accompanied by a declaration that it was made without prejudice to the right of the desai to any income, payable out of it, for the performance of his duties to which he might be entitled under any law in force. **ADRISHAPPA v. GUBUSHI-DAPPA** . . . **I. L. R., 4 Bom., 494**
[**L. R., 7 L. A., 162**]

22. ——— Alienation not for necessity.—*Held* on the evidence in the case, that a custom entitling the holder of an impartible raj to make an alienation of a portion of the estate in favour of his wife "in token of his love for her" was not established. **BEAWANI GHULAM v. DEO RAJ KUARI** . . . **I. L. R., 5 All., 542**

23. ——— Law of succession, Usage modifying.—A special usage modifying the ordinary law of succession must be ancient and invariable, and must be established to be so by clear and unambiguous evidence. **RAMA LAKSHMI AMMAL v. SIVANANANTHA PERUMAL SETHURAYER**

[**12 B. L. R., 396**

17 W. R., 553

14 Moore's L. A., 570

SREUMAH UMAH v. PALATHAN VITIL MARYA COOTHY UMAH . . . **15 W. R., P. C., 47**

LUGHMAN LALL v. MOHUN LALL BHAYA GAYAL
[**16 W. R., 179**]

11. INHERITANCE AND SUCCESSION.

24. ——— Inheritance.—Property descending in other than ordinary way.—Onus probandi.—Where ancestral property has apparently descended in the ordinary way of Hindu property,

HINDU LAW—CUSTOM—continued.**11. INHERITANCE AND SUCCESSION—continued.****Inheritance—continued.**

first to the son and thence to the mother, it lies on those who say it is confined to the direct descendants of the original donee to prove their case and show by some custom that that was the proper construction of the grant. **MAHENDRA SINGH v. JOKHA SINGH**

[**19 W. R., P. C., 211**]

25. ——— Onus probandi.—Customs varying ordinary course of descent.—An action was brought by the members of a junior branch of the family of the Maharaja of Chota Nagpore to recover possession of a fourth share of certain moveable and immoveable properties which originally formed part of an estate granted to one *A. S.*, a junior member of the family, for his maintenance by a former Maharaja. On *A. S.*'s death the eldest of his surviving sons succeeded to the Thakoor's gaddi, and one of his younger sons, *B. S.*, the admitted common ancestor of the parties, obtained a portion of that estate for his maintenance, including the properties in dispute, and the last person seized of them until her death was *L. S.* as the representative of her deceased husband, *D. N.* The plaintiffs' case was that *D. N.* having died without issue, all the properties ought, "according to the Hindu shasters and the custom of the family," to be divided equally between all the surviving male descendants of the common ancestor, defendant's answer being that, "according to the long established custom of the family of *B. S.*, he (the defendant) as the representative of the eldest branch thereof was entitled solely and exclusively to the properties in dispute." *Held* that the burden of proving the affirmative lay upon the plaintiffs whose claim was not based upon the ordinary Hindu law of inheritance, but upon a special custom without reference to the claimants' position in the family or their capability to satisfy the conditions of heirship. *Held* also, that as according to the custom in the eldest branch of *A. S.*'s family, the property left by a childless member devolved on the eldest or the gaddi's thakoor, and as the defendant's position in *B. S.*'s branch of the family was similar, i.e., that of a thakoor, he had every right to contend that the same custom must be presumed to obtain in both until the contrary was proved. **JETNATH SAHNE DEO v. LOKENATH SAHNE DEO** . . . **19 W. R., 239**

26. ——— Alyasantana law.—Self-acquisition, Succession to.—According to custom obtaining in South Canara, the self-acquisition of a member of a family governed by the Alyasantana law devolves upon his death not upon the family but upon his immediate representatives. **ANTAMMA v. KAVARI** . . . **I. L. R., 7 Mad., 575**

27. ——— Custom contrary to general rule as to inheritance of daughters.—The general rule of Hindu law being that if a man die separate in estate from his kinsmen without leaving male issue or a widow surviving him, his daughters inherit his moveable and immoveable property. An alleged custom to the contrary with respect to any

HINDU LAW—CUSTOM—continued.**11. INHERITANCE AND SUCCESSION—continued.****Inheritance—continued.**

particular kind of property must be proved by ample and satisfactory evidence before the Courts will admit it as established. **NARAYAN BABAJI v. NANA MANDHAR** 7 Bom., A. C., 153

28. ————— Right of females to inherit.—Village.—Wajib-ul-ars.—The paternal grandmother of a deceased village shareholder claiming to inherit in preference to his male collateral relations, the issue was fixed with the assent of the pleaders on both sides, whether the plaintiff, as a female, was excluded from inheriting by the custom of the family or tribe. *Held* that this was substantially a question of fact, and that on the evidence, which included the village *wajib-ul-ars*, the customary exclusion of females was not proved. **BURJORE v. BHAGANA** . I. L. R., 10 Cal., 557 [I. R., 11 I. A., 7

29. ————— Utpat families of Pandharpur.—Proof of family custom.—Among the members of the Utpat families of Pandharpur, in the Sholapur district, daughters are excluded from succession by a long and uniform family usage. Under Hindu law, a family usage or custom, when clearly proved, outweighs the written text of the law. But the greatest care must be exercised in accepting the alleged usage or custom as proved. When it is a family custom, the evidence must clearly show that it has been submitted to as legally binding, and not as a mere arrangement by mutual consent for peace or convenience. Any special rule of inheritance proved to exist in a Hindu family, and which is ancient, uniform, and reasonable, and not repugnant to the fundamental principles of Hindu law, should not be refused recognition. Origin and growth of the rights of inheritance of the widow and daughter by general Hindu law considered. **BHAU NANAJI UTPAT v. SUNDARAI** 11 Bom., 249

30. ————— Jain law.—Proof of custom of inheritance.—When a question regarding inheritance arises between parties of the Jain sect, the Courts should enquire into the customs of the sect and be guided by the result of the enquiry. If the party alleging the custom succeeds in establishing the same to the satisfaction of the Court, then, whether the custom be at variance or in accordance with Hindu law, the Court is bound to give effect to the custom. **SHEO SINGH RAI v. DAKHO** 6 N. W., 392

S. C. Affirmed by Privy Council

[I. L. R., 1 All., 688
I. R., 5 I. A., 87

31. ————— Law applicable to Khoja Mahomedans, Bombay.—It must be considered as the settled rule in Bombay that in the absence of sufficient evidence of usages to the contrary, the Hindu law is applicable in matters relating to property, inheritance, and succession among Khoja Mahomedans, and this rule was held to apply in a case of Khojas at Thana, no evidence having

HINDU LAW—CUSTOM—continued.**11. INHERITANCE AND SUCCESSION—continued.****Inheritance—continued.**

been given in that case to show its inapplicability to the Khojas of that place. **SHIVJI HASAM v. DATU MAVJI KHOJA** 12 Bom., 281

32. ————— Khoja Mahomedans.—Succession.—Letters of administration.—In the absence of satisfactory proof of a custom, differing from the Hindu law, the Courts of this Presidency apply to Khojas the Hindu law of inheritance and succession. If a custom opposed to Hindu law be alleged to exist amongst Khojas, the burden of proof rests upon the person setting up that custom. The Khojas, having been originally Hindus and converted from the Hindu religion by a dai, or missionary of the Imam of the Ismailis, to the Mahomedan religion of the Shia division and Imami Ismaili sub-division, and being partly regulated by Mahomedan law, partly by Hindu law, and partly by custom, occupy a position so peculiar that the Courts do not apply to them, when seeking to prove a custom of inheritance or succession, differing from the Hindu law, the stringent rule that the custom must be proved to be ancient, invariable, and submitted to as legally binding, but will act upon satisfactory evidence that it has been the general custom and accepted as such by the great majority of the Khoja community. A Khoja having died intestate, and without leaving issue, was survived by his mother (a widow), his wife, and a married sister. *Held* that, according to the custom of the Khojas, his mother was entitled to the management of his estate, and, therefore, to letters of administration in preference to his wife or his sister. **HIRABAI v. GARRAI** 12 Bom., 294

33. ————— Khoja Mahomedans.—In order to prove a custom of inheritance among Khoja Mahomedans at variance with the rules of Hindu law, evidence merely of the opinion of the leading members of the caste, is not enough. Instances must be proved in which the alleged custom has been observed and followed. **RAHIMATBAI v. HIRBAI** I. L. R., 3 Bom., 34

34. ————— Succession to Raj.—Impartible estate.—A raj is not necessarily impartible. In every case in which a departure from the ordinary law of succession and inheritance is relied on, a particular custom must be proved. **COURT OF WARDS v. RAJ-KUMAR DEO NANDAN SING** . 9 B. L. R., 310, note

35. ————— Proof of indivisible nature of raj.—Where a party alleges a raj to be indivisible, and that he is, as heir, entitled to succeed to the whole, the onus of proof is on him. **GIRDHARAN SINGH v. KOOLAHUL SINGH** [6 W. R., P. C., 1: 2 Moore's I. A., 344

36. ————— Raj of Keonghur.—According to the family custom the sons of a Rajah of Keonghur, by wives of a lower caste than the Rajah, rank after the sons by wives of the same

HINDU LAW—CUSTOM—continued.**11. INHERITANCE AND SUCCESSION—continued.****Succession to Raj—continued.**

caste as the Rajah. **BHITOOPRA PATMOHADRA v. BASOODER DUL BHWARTHE PATHAIK**

[2 W. R., 232]

37. ——— Appointment of Jubraj.—*Qualifications for Rajahship.*—Where, in a question as to the right of inheritance to a raj, it was admitted that there was a custom that the reigning Rajah should name a Jubraj and a burra thakur, of whom the first succeeds to the throne, and the latter to the office of Jubraj; but it was contended, on the one hand, that if the reigning Rajah had appointed a Jubraj his choice should have been guided partly by an alleged promise or intention on the part of the former Rajah, and partly by the appellant's preferential title as legal heir by seniority amongst the near kindred; and on the other, that the choice of the reigning Rajah was absolutely free, and could not be controlled by the wishes of the former Rajah. *Held* that where there was evidence of a power of selection, the actual observance of seniority, even in a considerable series of successions, could not of itself defeat a custom which established the right of free choice. Where family custom required the union of two things to constitute the legal heir, *viz.*, seniority in age and nearness of kin, and the claimant has but one of these qualifications in himself, *viz.*, seniority, he does not entitle himself to succeed. Where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom. **NILKRISTO DEB BARMONO v. BIR CHANDRA THAKUR**

[3 B. L. R., P. C., 13; 12 W. R., P. C., 21
12 Moore's I. A., 523]

Affirming the decision of the High Court in **BHEE CHUNDER JOORAJ v. NEELKISHEN THAKUR**

[1 W. R., 177]

38. ——— Succession to Hosaipore raj.—*Confiscation of estate by Government.*—On the accession of the British Government to the Dewanny, Rajah Futtah Sahie, in 1767, having refused to acknowledge allegiance to, and having openly rebelled against, the Government, was expelled from his estate of Hosaipore. The Government retained the estate in its own possession until 1790, when, setting aside the sons of Futtah Sahie, it conferred the estate upon Chutterdharee, at that time the eldest surviving member of the younger branch of the family. Two of the grandsons of Chutterdharee having sued to establish their right to a moiety of his property, *Held* that the Hosaipore property was a raj, and that by the rule of the family it was to descend entire to a single heir; that the Government, by setting aside a particular branch of the family, did not, in intent or in fact, confiscate the property, and thereby extinguish the rights of every member of the family; that the family custom and the custom of the raj were not destroyed by the infringement of the custom by virtue of which Chutterdharee acquired the estate; and that he having acquired the estate subject to a particular custom, and

HINDU LAW—CUSTOM—continued.**11. INHERITANCE AND SUCCESSION—continued.****Succession to Raj—continued.**

having himself done nothing destructive of that custom, his heirs were bound by the same custom, to the exclusion of the ordinary law of Hindu inheritance. **TELUCKDHAREE SAHIE v. RAJENDER PROTAUB SAHIE. RAM GOPAUL SINGH v. TELUCKDHAREE SAHIE**

[W. R., F. R., 97]

39. ——— Succession, Family usage regulating.—*Discontinuance of family custom.*—*Beng. Regs. XI of 1793 and X of 1800.*—In a suit to recover possession of an estate by virtue of an alleged family custom, under which the estate was descendible to the eldest son to the exclusion of the other sons, and was impartible and inalienable, it was uncertain what the nature or origin of the tenure of the estate was, but there had been admittedly a settlement of it by Government at the time of the perpetual settlement. *Held*, assuming the custom to have existed, that although by such settlement any incidents of the old tenure of the estate were impliedly at an end, yet the settlement did not of itself operate to destroy the family usage, even though the origin of it could not be shown. *Quare.*—Whether Regulation XI of 1793 or Regulation X of 1800 would govern a case where the claim rested only on a continuing family usage? *Held* on the evidence that from the acts of the members of the family the manner of succession to the estate, even if it prevailed as alleged, was probably not regarded by them in the light of a family custom, but as one of the incidents or conditions of tenure, and that since the settlement by Government the family had considered all these incidents at an end, and had treated the estate as an ordinary estate held under the Government, and subject to the ordinary laws of succession. Assuming the custom to have existed, it was of a nature which could, without any violation of law, be put an end to. There appears to be no principle or authority for holding that a manner of descent of an ordinary estate, depending solely on family usage, may not be discontinued either accidentally or intentionally, so as to let in the ordinary law of succession. Such family usages are in their nature different from a territorial custom, which is the *lex loci* binding all persons within the local limits in which it prevails. **RAJKISHEN SINGH v. RAMJOY SURMA MOZOOMDAR**

I. L. R., 1 Calo. 186
[19 W. R., 8]

Affirming decision of the High Court in **RAMJOY SURMA v. PRANKISHEN SINGH**

2 W. R., 80

12. MAHOMEDANS.

40. ——— Mahomedan family adopting Hindu customs.—*Discretion of Judge.*—A Mahomedan family may adopt the customs of Hindus subject to any modification of those customs which the members may consider desirable. A Judge is not bound, as a matter of law, to apply to a Mahomedan family living jointly all the rules and presumptions which have been held by the High Court to apply to a joint Hindu family. It rests with him to decide in any particular case how far he should apply

HINDU LAW—CUSTOM—continued.**12. MAHOMEDANS—continued.****Mahomedan family adopting Hindu customs—continued.**

those rules and presumptions. *SUDDUTONNESSA v. MAJADA KHATOON*. . . I. L. R., 3 Cal., 694
[2 C. L. R., 308]

13. MARRIAGE.

41. ——— Marriage, Suit to declare validity of.—Proof of custom.—Necessity to raise express issue as to custom.—Where a suit to have it declared that defendant was plaintiff's wife, and was bound to live with him, was dismissed, on the ground that custom required that, in order to constitute such a right there should have been a second marriage,—*Held* that an issue should have been framed as to whether or no such a custom existed. *BOOL CHAND KALYA v. JANOKKI*. . . 24 W. R., 228

42. ——— Gandharp form of marriage.—Legitimacy of children.—Entry in village *wajib-ul-ars*.—*D.* died in 1860 leaving him surviving his first wife *G.*, his second wife *B.*, his mother *R.*, and *M.*, his son by a woman to whom he had been married by the "gandharp" form of marriage. In 1873 *R.* died, and on her death *M.* procured the registration of his name in respect of her one-third share, it having been previously decided in proceedings by the settlement officer that the name of each claimant should be registered in respect of a one-third share. In 1879 *B.* sued *M.* for possession of the one-third share held by him claiming as heir of her deceased husband *D.*, and alleging that *M.* was not the legitimate son of *D.*, and therefore not entitled to succeed to such rights. *M.* set up as a defence that he was the legitimate son of *D.*, and therefore entitled to succeed; and that, assuming he was not legitimate, he was entitled to succeed by the custom of the village. In support of such custom *M.* relied on the following entry in the village *wajib-ul-ars*:—"In this village a mistress treated as a wife and the child of such a mistress shall also have a right to transfer property and to obtain and receive property." *Held* *M.* was illegitimate. *Held* also, with reference to the entry in the *wajib-ul-ars*, that it did not necessarily place illegitimate children on an equality with legitimate as heirs; and if that was its intention it was ineffectual, as parties could not by agreement alter the law of succession; and if the entry was regarded as evidence of custom it was not conclusive. *BHAONI v. MAHARAJ SINGH*. I. L. R., 3 All., 738

43. ——— Dissolution of marriage at will.—Illegal custom.—A custom of the Talapada Holi caste that a woman should be permitted to leave the husband to whom she has first been married, and to contract a second marriage (*natra*) with another man in the lifetime of her first husband and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law. *REG. v. KARSAN GOJA*. REG. v. BAI RUPA

[2 Bom., 194: 2nd Ed., 117]

44. ——— Marriage of female member of family of Rajah of Tipperah.—Family custom.—A female member of the family of the

HINDU LAW—CUSTOM—continued.**18. MARRIAGE—continued.****Marriage of female member of family of Rajah of Tipperah—continued.**

Rajah of Tipperah by custom does not cease to be a member of the family by marrying into another. *ROOP MUNJOORE KOOBEE v. BEEB CHUNDER JOORRAJ*. . . 9 W. R., 308

14. MIGRATING FAMILIES.

45. ——— Presumption as to migrating family.—Hindu law is in the nature of a personal usage or custom, and probably migratory families or tribes would retain their own usages. The presumption is in favour of the continuance of the ancient family custom. *SURENDRA NATH ROY v. HIRAMANI BURMONT*
[1 B. L. R., P. C., 26: 10 W. R., P. C., 35
12 Moore's I. A., 81]

15. PRIMOGENITURE.

46. ——— Primogeniture.—Descent of ancestral estate.—Thakurs of Bombay Presidency.—A custom in the case of a petty Hindu family that the family estate shall descend to the eldest son, the second and other sons being entitled to maintenance only, cannot be supported. *Sembla*.—A different rule would apply to such a custom prevailing among Thakurs and chiefs of the Bombay Presidency. *BASVANTRAY KIDINGAPPA v. MANTAPPA KIDINGAPPA*. . . 1 Bom., Ap., 42

47. ——— Custom superseding general law.—A custom of primogeniture in the family of a Desoli in the Southern Mahratta country supercedes if clearly proved the general Hindu law of descent. *SHIDJIRAY v. NAIKJIRAY*
[10 Bom., 228]

48. ——— Proof of custom.—Custom of primogeniture not proved. *AMBIT NATH CHOWDREY v. GAURI NATH CHOWDREY*
[6 B. L. R., 223: 15 W. R., P. C., 10
13 Moore's I. A., 542]

49. ——— Suit by younger brother for partition.—In a suit by younger brothers against the eldest brother for a partition of the *ilaka* of Rawulpore, the family usage and custom for eight generations for a *zemindari* estate in Bengal to descend entire to the eldest son, to the exclusion of the other sons, sustained. (*RAWUT*) *URGUN SINGH v. (RAWUT) GHUNSIAM SINGH*
[5 Moore's I. A., 169]

50. ——— Partition of *deshpande vatan*.—Presumption as to impartibility of *vatan*.—Cessation of duties attached to a *vatan*.—It had been the practice in a *deshpande vatandar's* family, extending over a century and a half without interruption or dispute of any kind whatever, to leave the performance of the services of the *vatan* and the bulk of the property in the hands of the elder branch, and to provide the younger branches

HINDU LAW—CUSTOM—continued.**15. PRIMOGENITURE—continued.****Primogeniture—continued.**

with maintenance only. *Held* that such practice, being more probably due in its origin to a family or local usage than to a mere arrangement determinable at the will of any members of the family, ought to be recognised and acted upon as a legal and valid custom. **RAMRAO TRIMBAK DESHPANDE v. YESH-VANTRAO MADHASAVRAO DESHPANDE**

[I. L. R., 10 Bom., 327]

51. ———— Deshmukhi vatan, Impartibility of.—*Partition, Suit for, of such vatan.*—In the middle of the seventeenth century one Veduji, the ancestor and founder of the family of the parties to the suit, then called the Mhaske family, acquired a deshmukhi vatan originally consisting of eight chavurs of inam land, which was afterwards equally divided between the two sons of Veduji, who became the heads of separate branches of the family, called, respectively, the Pimparne and the Jakhori-
kar branches, of which the former was the elder. In the latter part of the seventeenth or early part of the eighteenth century the elder branch further acquired six chavurs of land. The parties to the suit were brothers and belonged to the elder branch. In the middle of the eighteenth century disputes arose between the Jakhori-
kar branch and Trimbakrav, the then eldest representative of the Pimparne branch, in respect of the liability to partition of the emoluments, dignities, and property appertaining to the said vatan, and a decree was passed by the Peishwa, Raghunath Bajirav, to the effect that the representatives of the Jakhori-
kar branch should keep the inam lands they had, and continue to receive, as before, money for defraying the expenses of weddings and other household matters, but should have nothing further to do with the vatan, which, with the "right of eldership," was to be enjoyed by the sons, grandsons, and descendants of Trimbakrav in succession. The subsequently acquired six chavurs of land, two of which were situated at Pimparne and the remaining four at Ambhora, described as sadhnukh, had been always spoken of and dealt with as connected with the vatan and the original eight chavurs, and had been enjoyed for a hundred or hundred and fifty years by Trimbakrav and his ancestors free from any right of the bhaubands, and this mode of enjoyment was recognised and affirmed by the authorities in the sanads, and also, subsequently, by the British Government. The plaintiff, who was one of the three sons of Gopalrav, now deceased, sued his eldest brother, Trimbakrav *alias* Bajirav, and his second brother, Balvant-
rav, for partition into three equal shares of the property appertaining to the deshmukhi and patilki vatan. Trimbakrav, the first defendant, resisted the suit on the ground that by the custom of the family he, as the eldest son, took the vatan and the property appertaining to it, subject only to allotments for maintenance of the younger brothers. The Court of first instance found the alleged custom proved, but with the consent of the first defendant awarded Rs700 to the plaintiff as his third share of the immoveable property. The plaintiff appealed to the High Court, and contended (*inter alia*) that the Peishwa's

HINDU LAW—CUSTOM—continued.**15. PRIMOGENITURE—continued.****Primogeniture—continued.**

decree related to the original eight chavurs only, and not to the subsequently acquired six chavurs, and that the younger members of the Pimparne branch were not bound by that decree. *Held* that the plaintiff's claim to partition of the deshmukhi vatan, including the six chavurs, should be disallowed, the existence of the "custom of eldership," as alleged by the first defendant, being satisfactorily established by the documentary as well as other evidence—a custom which the Jakhori-
kar branch unsuccessfully endeavoured to repudiate, but which the younger members of the Pimparne branch had throughout recognised until the present suit; and the fact that the assessment and other dues, as well as all the allotments, had been always paid by the eldest member of the Mhaske family was a strong circumstance in corroboration of the first defendant's allegation. The circumstance, that services incidental to the vatan had been abolished, could not affect the title of eldership of the first defendant as established by custom. *Held* also that plaintiff's claim to the miras land and the patilki vatan should be allowed, there being no evidence of a custom of primogeniture as regards them, nor were they connected with the deshmukhi vatan. Decree varied by directing the partition of the miras land and patilki vatan. **GOPALRAV v. TRIMBAKRAV** . . . I. L. R., 10 Bom., 596

52. ———— Raj zemindari of Tirhoot.—A family usage for fourteen generations, by which the succession to the raj zemindari of Tirhoot had uniformly descended entire to a single male heir to the exclusion of the other members of the family, upheld. A custom for the Raja in possession in his lifetime to abdicate and assign by deed the raj, title, and domain to his eldest son or next immediate male heir, held good, and a deed so assigning the raj to an eldest son (provision being made for allowances for the younger sons) sustained. **GUNSAH DUTT SINGH v. MOHESHW SINGH** [6 Moore's I. A., 184]

53. ———— Mitakshara law.—*Joint and separate property.—Impartibility.*—Although an estate be not what is technically known in the north of India as a raj, or what is known in the south of India as a polliam, the succession thereto may, under a kulachar, or family custom, be governed by the rule of primogeniture. Where the family to which ancestral property held in this peculiar manner belongs is subject to the Mitakshara law, and the property is not separate, the succession in the event of a holder dying without male issue, is given to the next collateral male heir in preference to the widow or daughters of the deceased holder. **CHINTAMUN SINGH v. NOWLUKHO KONWARI**

[I. L. R., 1 Calc., 153; I. R., 2 I. A., 263
24 W. R., 253]

Reversing the decision of the High Court in **NATUKER KONBI v. CHOWDERY CHINTAMUN SINGH** . . . 20 W. R., 247

HINDU LAW—CUSTOM—continued.**16. TRUSTEE, SUCCESSION TO.**

54. ——— Inheritance to deceased trustee.—By usage of Hindu law in Tinnivelly district the eldest male heir of a deceased trustee succeeds as trustee to him from whom he inherits. **PURAPPAYANALINGAM CHETTI v. NULLASIVAN CHETTI** . . . 1 Mad., 415

17. UNCERTAIN CUSTOM.

55. ——— Uncertain and unintelligible custom.—Custom as to certain property descending to females.—Sale in execution of decree.—Held that a custom in a family that whatever property, as a garden, was planted by females passed to the possession of females to the exclusion of all male heirs, was a custom uncertain and unintelligible, and not one which would be upheld by the Court. Such property was not, therefore, exempt from sale in execution of a decree against the husband of one of the ladies who claimed it. **BRAGWAN DAS v. BALGOBIND SINGH** . . . 1 B. L. R., 8, N., 9

HINDU LAW—DEBTS.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

See VENDOR AND PURCHASER—NOTICE.
[1 L. R., 4 Cal., 897]

1. ——— Liability for debts.—*Liability of property for debts of ancestor.*—According to Hindu law, a man's property is liable for his debts, and the debts of an ancestor must be satisfied before the heir has any interest in ancestral property. **GUNGA NARAIN PAUL v. UMESH CHUNDER BOSE** [W. R., 1864, 277]

2. ——— Liability of property for debts of ancestor.—The property of a Hindu which has descended to his sons and grandsons is, while in their hands, liable for his debts. **SAKHARAM RAMOHANDRA DIKSHIT v. GOVIND VAMAN DIKSHIT** [10 Bom., 360]

3. ——— Liability of son for father's debts.—The freedom of a son from obligation to pay a deceased father's debts has respect to the nature of the debt and not to the nature of the property inherited by son from father; and where the debt is not of an immoral kind, a judgment-creditor of a deceased father can proceed against the inherited property in execution of decree, and follow any assets which can be traced to the son's hands. **OMUTHOONNISSA v. PURESUN NARAIN SINGH** [25 W. R., 202]

See GRIDHAREE LALL v. KANTOO LALL
[14 B. L. R., 187 : 22 W. R., 56
L. R., 1 I. A., 321]

HINDU LAW—DEBTS.—Liability for debts—continued.

4. ——— Debts of testator.—*Charge on specific property.*—Though the payment of debts is a charge on the property of a testator, it is not a charge on any specific portion of the property. **NILKANT CHATTERJEE v. PRARY MOHAN DAS** [8 B. L. R., O. C., 7 : 11 W. R., O. C., 21]

See GOPAL NARAIN MOZOOMDAR v. MUDDOMUTTY GUPTA . . . 14 B. L. R., 21

5. ——— Liability of son not inheriting.—According to Hindu law, a son who has not inherited his father's estate is not liable for his debts. **DHEBAJ MAHATAB CHAND v. HURBO MOHUN ACHARYA** . . . W. R., 1864, Mis., 1

JUMMAL ALI v. TIRREH LALL DOSS [12 W. R., 41]

6. ——— Liability of heirs for debts of ancestor.—Heirs are liable for the debts of the person from whom they have inherited to the extent of the property which they have inherited. **RAJ ROOP SINGH v. BULDEO SINGH** [2 W. R., 258]

MOOKTOKESHREE DEBIA v. WOOMA CHURN BHUTTA-CHARYA . . . 12 W. R., 233

7. ——— Liability of heirs for debts of ancestor.—The liability of an heir for the debts of his ancestor is only to the extent of the inheritance which he has received. If he has waived all his rights to the inheritance his property acquired *aliunde* is not liable. **JOOMAI v. WAHID ALI** [W. R., 1864, Mis., 33]

8. ——— Liability of son for father's debts.—*Representative of deceased Hindu.*—*Civil Procedure Code, 1877, s. 234.*—Though a son is bound by Hindu law to pay his father's just debts from any property he may possess, yet when he is made a party to a decree as representative of his deceased father for the purpose of executing it his liability is limited to the amount of assets of the deceased which may have come to his hands and has not been duly disposed of. **SANGILI VIRAPANDIA CHINNATHAMBIAR v. ALWAR AYYANGAR. ZEMINDAR OF SIVAGIRI v. ALWAR AYYANGAR** [I. L. R., 3 Mad., 42]

9. ——— Liability of grandson for debts.—The grandson of a Hindu is bound to pay the debts of his grandfather, independent of assets, but without interest, according to the doctrines of the Maharasta school. **NARASIMAHARAV KRISHNARAV v. ANTAJI VIRUPAKSH** [2 Bom., 64 : 2nd Ed., 61]

But see Bombay Act VII of 1866, the Hindu Heirs Relief Act, which alters the law in this respect. That Act, however, does not apply to any case in which judgment had been pronounced before its enactment. **SAKHARAM RAMOHANDRA DIKSHIT v. GOVIND VAMAN DIKSHIT** . . . 10 Bom., 361

10. ——— Liability of joint estate for separate debts.—*Assets in hands of heir.*—The divided share of a Hindu in property which

HINDU LAW—DEBTS.—Liability for debts—continued.

previously belonged to the united family, is, after his decease, and while yet in the hands of his heir, assets for payment of the debts of the deceased. The whole of the family undivided estate would generally, when in the hands of the sons or grandsons, be liable for the debts of the father or grandfather, and previously to the passing of Bombay Act VII of 1866, the sons and grandsons were personally liable for the debts of the father or grandfather whether they received assets or not. But there is no authority for the converse, *viz.*, that the father or grandfather is responsible for the debts of his son or grandson independently of the receipt of assets, unless he promise payment. The proposition of Hindu law that debts follow the assets into whosoever hands they come, must, generally speaking, be confined to separate estate, and the liability of undivided ancestral estate, in the hands of sons and grandsons, to the debts of the father or grandfather is exceptional. **UDARAM SITARAM v. BANU PANDAJI** 11 Bom., 78

11. Inheritance.—

Minor.—Liability of son for father's debts.—Bom. Act VII of 1866.—In the Presidency of Bombay, under the provisions of Bombay Act VII of 1866, where a Hindu dies intestate, leaving property, his son is liable to his (the father's) creditors to the extent of the value of the property, although the property may not have come into the son's possession, but remains in the hands of third persons. The father having left property, the son may recover it if it has been taken against his assent, and he ought to do so to enable him to discharge the first duty of a Hindu to his deceased father. So long as he takes no steps it is to be presumed that the property is held with his assent. He may reclaim it if he will, and thus it is held to his use within the meaning of section 2 of Bombay Act VII of 1866. **KIVAL BHAGVAN v. GANPATI NARAYAN** I. L. R., 8 Bom., 220

12. Debt incurred for *sraddh* of father.—The payment of a debt incurred in conducting the *sraddh* of a father is incumbent upon a son, whether he is of age or a minor or a posthumous son. **SUKREHAH BAWOO v. HURO CHURN BURU** 6 W. R., 34

13. Liability of son to pay barred debt of father.—S. sued N., a Hindu, to recover Rs30 secured by a promissory note executed by N.'s deceased father in consideration of a debt for which S. had sued the father and which had been declared barred by limitation. Held that N. was bound to pay the debt from any assets of his father received by him. **NARAYANASAMI v. SAMIDAS** [I. L. R., 6 Mad., 293]

14. Liability of *polliam* in hands of son for debts of possessor.—In a suit to recover from the minor son of the late possessor of a *polliam*, of which the guardians of the minor were in possession by virtue of a fresh grant made by the Government to the minor after the death of his father, the late possessor, money lent to the father of the minor to pay off arrears of *peishcash* for which the *polliam* was about to be attached, and

HINDU LAW—DEBTS.—Liability for debts—continued.

for reproductive work done upon the land.—Held that the income of the *polliam* was not liable for the debt. **ARBUTHNOT v. OOLUGAPPA CHETTY**

[5 Mad., 303]

S. C. on appeal to Privy Council **OOLUGAPPA CHETTY v. ARBUTHNOT** . . . 14 B. L. R., 115 [L. R., 1 I. A., 282]

15. Personal debts.

Charge on estate.—Debts undertaken by the holder of an ancestral and impartible *polliaput* in respect of decrees obtained against his mother cannot by such undertaking become a charge upon villages forming part of the estate. **KOSALA RAMA PILLAI v. SALUCKAI TIVAR alias OTTA TEVAR**

[8 Mad., 189]

16. Loan incurred to pay ancestral debt.—Where money was borrowed by a near relative of a joint Hindu family holding part of the ancestral property and appearing before the world as a co-parcener of the family, to pay off a *bond fide* ancestral debt, the loan was held to be a family and not a personal debt. **BUIDBO RAM TEWARAN v. SOMESUR PAURAY** . . . 7 W. R., 491

17. Liability of heir for debts.—According to Hindu law, a creditor cannot follow the property of a deceased debtor, but he may hold the heir personally liable. **UNNOPOORNA DASRA v. GUNGA NARAIN PAUL** 2 W. R., 296

18. Liability of heir. Lien of creditor for debts.—When a Hindu dies indebted his estate does not in whole or in part vest in the creditor as if by hypothecation, but the entire estate absolutely passes to the heirs, with full power to deal with the whole estate before satisfaction of the debts. The creditor has no lien on the estate preferential to him who takes the estate in pledge from the heirs, nor can he, after the alienation thereof by heirs for a *bond fide* and valuable consideration, follow it in the hands of the alienee. He has merely a right of suit against the heirs personally who are held liable for the same to the extent of the assets they receive by inheritance. **ZUBURDUST KHAN v. INDURMUN** . . . 1 Agra, F. R., 71; Ed. 1874, 55

19. Power of heir to dispose of estate. Creditor's right to follow assets of deceased Hindu into hands of purchaser for value.—Under the Hindu law, the property of a deceased Hindu is not so hypothecated for his debts as to prevent his heir from disposing of it to a third party, or to allow a creditor to follow it into the hands of a person who has purchased it from the heir of the deceased in good faith and for valuable consideration. **Sundarappa v. Moodkapa**, 8 Harr., 232, and **Naroo Huree v. Konbeir Munohur**, 8 Harr., 289, followed. **JAMITYATRAM RAMCHANDRA v. PARBHUDAS HATHI** [9 Bom., 116]

20. Liability of Heir.—Certificate to collect debts.—Alienation of the estate of a deceased person for the payment of his debts.—Succession.—Where a person to whom a certificate had been granted under Act XXVII of

HINDU LAW—DEBTS.—Liability for debts—continued.

1860 to collect the debts due to the estate of a deceased Hindu, but who had no share or interest in such estate, contracted a debt for the purpose of paying debts due from such estate, and charged such estate with the payment of such debt.—*Held* that the creditor could not, by virtue of the acts of such person, claim to recover the moneys advanced by him to such person from the heirs and estate of the deceased, even though such moneys had been applied to the liquidation of the debts of the deceased. *MUNIA v. BALAK RAM* . . . I. L. R., 2 All, 513

See also *HASAN ALI MEHDI HASAN*

[I. L. R., 1 All., 533]

21. ———— *Widow, Liability of, for debts of husband.*—A widow is liable for a debt contracted by her husband. Such debt may be set off against any debt due to her. *GRISH CHUNDER LAHOORY v. KOOKAREE DABEA*

[I W. R., Mis., 24]

22. ———— *Repairs to houses held by a Hindu lady having a life-interest.—Credit.—Death of life-tenant before payment.—Liability of estate for the debt.*—A daughter succeeding to the estate of her father ordered a quantity of lime for the purpose of making repairs to certain houses on the estate; the repairs were completed, but the lady died before the debt contracted by her for the lime had been paid off. At the time of her death there remained outstanding a large sum due as rent, which the lady had neglected to collect during her lifetime. In a suit brought by the creditor against the heir of the lady, and the reversionary heirs of her father's estate (into whose hands the estate had passed), he asked for a decree—(1) against the estate in the hands of the reversioners; and (2) sought for payment out of the rents uncollected in the lady's lifetime, or in the alternative, that the lady's personal estate might be held liable. On a reference being made to a Full Bench, as to whether the plaintiff could enforce his claim against the estate in the hands of the heirs of Raj Chunder generally, or as against the amount of rents, which accrued due to the lady, and which remained uncollected: *Held* by MITTAR, McDONELL, and PRINSEP, JJ. (GARTH C.J., and WILSON, J., dissenting) that the plaintiff was certainly entitled to be paid out of the arrears of rent since collected, but that he also was entitled to enforce his claim against the heirs of the last full owner of the estate generally. *HURRY MOHUN RAI v. GONESH CHUNDER DOSS*

[I. L. R., 10 Calc., 823]

HINDU LAW—ENDOWMENT.

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See *MALABAR LAW—ENDOWMENT.*

1. CREATION OF ENDOWMENT.

1. ———— *Creation by deed of gift.—Object of endowment.—Sheba.—Presumption.*—The presumption is that the object of an endowment by a Hindu for the worship of idols is to preserve the sheba in the family, rather than to confer a benefit on an individual; but if there are in the deed of gift no words denoting an intention of the donor that the gift should belong to the family, that presumption will not arise. *CHUNDERNATH ROY v. GOBINDNATH ROY*

[11 B. L. R. P. C., 86
18 W. R., 221]

COLLECTOR OF MOORSHEBADAD v. SHIBESUREE DABEA . . . 11 B. L. R., P. C., 86

[18 W. R., 226]

2. ———— *Creation of religious endowment.—Charity.—Family idols.—Sale of trust property in execution.—Suit by trustee to recover the property.—Limitation.*—The Hindu law, unlike the English law with respect to charities, makes no distinction between a religious endowment having for its object the worship of a household idol and one which is for the benefit of the general public. In execution of decrees against the plaintiff, as the representative of his deceased father and brother, certain lands were sold to the first defendant. The plaintiff sued to recover them, alleging that the former owner of the lands had assigned them to his (the plaintiff's) brother and himself (the plaintiff), and their descendants by a deed of gift to perpetuate the worship of the donor's household idol. *Held* that the plaintiff was entitled to recover the property. The gift was a valid one, creating a religious endowment under the Hindu law, and the plaintiff's suit was not to set aside the sale, but was one by the trustee of the endowment to recover the property to which the limitation of twelve years was applicable. *RUPA JAGHEET v. KRISHNAJI GOVIND* . I. L. R., 9 Bom., 169

3. ———— *Form of creation.—Perpetuity.—Trust.—Void and inoperative devise.*—A Hindu by will devised certain property, consisting of a family dwelling-house and land, to trustees for ever, for the residence, maintenance, and performance of the worship of certain family idols, and appointed his sons and their descendants in the strict male line to be shebais of the idols for ever, making provision for their residence in the family dwelling-house; the will also contained a clause restraining any partition, division, or alienation of the property so dedicated to the worship of the idols. The testator appointed the trustees executors of his will, and by a codicil bequeathed legacies to various members of his family. In a suit against the executors to recover a legacy so bequeathed,—*Held* the devise of the property to the

HINDU LAW — ENDOWMENT—continued.**1. CREATION OF ENDOWMENT—continued.****Form of creation—continued.**

idols was void and inoperative as being a settlement in perpetuity on the male descendants of the testator, and for their use, and not a real dedication for the worship of the idols. **PROMOTHO DOSSEE v. RADHIKA PERSHAD DUTT** . . . 14 B. L. R., 175

4. ————— **Devise for worship of idol.—Right to refund of money expended.**—Devise upon trust for the use of a thakoor, with direction that the wife, daughter, and daughter-in-law of testator be allowed to live in the house for their lives, and perform the worship of the idol, with limitation over to others on the decease of the survivors of them, and a sum of Rs 16 allowed to the survivor of the first legatee for the purposes of the idol, and after her death that the same sum be applied to the expenses of the idol. When the legatee has for a time at her own expense kept up the service, she is not entitled to have the money refunded. **ROYMONY DOSSEE v. ROGHUNATH SEN** . . . 1 Ind. Jur., N. S., 14

5. ————— **Mode of dedication.—Debutter property.—Idol.—Partition subject to trust for idol.**—In a suit for possession by partition, the plaintiff stated that the common ancestor of the plaintiff and the defendant and his five sons acquired certain properties; that, on the death of the ancestor, his five sons separated among themselves, and each took a certain share of land for his own expenses, and the remaining portion of the lands they held in ijmalee among themselves; that one of them became the manager of this portion of the lands, made the collections of the rents, and from the profits thereof paid the expenses of the rash, dole, &c., festivals, and the worship of the debta,—all of which were alleged to be patrimonial, and divided the balance. The defence substantially was that the whole of the ijmalee land was the property of the idol. It was found in the lower Court that a certain portion of the land was debutter and not partible, and a decree was made for partition of the remainder. *Held* on appeal that as it was not shown that this latter portion of the property had been transferred from the family and dedicated to the idol, a partition of it should be made, but subject to a trust in favour of the idol. **RAM COOMAR PAUL v. JOGENDER NATH PAUL** . . . I L. R., 4 Cal., 56 [2 C. L. R., 310]

6. ————— **Indirect dedication.—Custom and usage.—Moral obligation.**—When there has been no direct endowment to support the worship of the family idol, Hindu usage and custom, although it would create a moral obligation, such obligation will not be held as having any legal operation. **SHAMLOLL SEIN v. HUROSOONDY GOOPTRA** [1 Ind. Jur., N. S., 36: 5 W. R., 29]

2. PROOF OF ENDOWMENT.

7. ————— **Gift by person at point of death.—Proof of gift to idols.**—Clear proof is necessary to support a gift, made orally by a person

HINDU LAW — ENDOWMENT—continued.**2. PROOF OF ENDOWMENT—continued.****Gift by person at point of death—continued.**

at the point of death, of all the donor's property to idols. **BIPPRO PERSHAD MYTEE v. KENAE DAYEE** [3 W. R., 165: 5 W. R., 82]

8. ————— **Debutter property, Proof of ancient and hereditary character.**—Land granted to an idol cannot be held to be debutter, unless it is found to be ancient hereditary debutter, publicly assigned as such prior to the donor's incumbency. **SOSHIKISHORE BUNDOPADHYA v. CHOORAMONE PUTTO MOHADABEE** . . . W. R., 1864, 107

9. ————— **Treatment of, by founder and his descendants.**—One test of an endowment as to whether it is *bond fide* or nominal is to see how the founder himself treated the property, and how the descendants have since treated it. **GANGA NARAIN SIBGAR v. BRINDABUN CHUNDER KUR CHOWDHRY** [3 W. R., 142]

10. ————— **Proof of actual assignment to idol.—Proceeds of land appropriated for worship.**—The mere fact of the proceeds of a piece of land having been appropriated for the worship of an idol, does not constitute it an endowed property, but the fact of the assignment to the idol must be specifically proved. **NARAIN PERSAD MYTEE v. ROODUR NARAIN MUNGLE** . . . 2 Hay, 490

11. ————— **Proof of expenditure for long time of proceeds of land on worship of idol.—Documentary evidence.**—Documentary proof is not absolutely necessary to prove an endowment. The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose; but where there is apparently good evidence, going back for more than half a century, that the land was given for the support of an idol, proof that from that time the proceeds had been so expended would be strong corroboration. **MUDDUN LALL v. KOMUL BIBEE** . . . 8 W. R., 43

12. ————— **Use of proceeds of land for worship of idol.—Evidence of dedication.**—The mere fact that a portion of the profits of land in the possession of a party had been for some time used for the worship of an idol is no proof of an endowment, and cannot impose on such party the liabilities attaching to the office of a shebait. **RAM PERSHAD DASS v. SREEHUREE DASS** . . . 18 W. R., 399

13. ————— **Release of land by Government on ground of its appropriation to idol.—Evidence of permanent dedication.**—The mere fact of land having been released by Government on the ground of its being appropriated to the services of an idol does not impose on it the character of a religious endowment so as to exempt it permanently from being attached and sold in satisfaction of decrees against a person who may hold it. **NIMAYE CHURN PUTRETUNDRE v. JOGENDRO NATH BANERJEE** [21 W. R., 365]

HINDU LAW — ENDOWMENT — continued.**2. PROOF OF ENDOWMENT—continued.****14. ——— Purchase in name of idol.—**

Alienation.—The plaintiff sued as the shebait of a certain idol to recover possession of a zemindari by setting aside an alienation thereof effected by his grandmother, on the ground that it was debutter property dedicated to the idol, and consequently inalienable. It appeared that the property in dispute was purchased by the grandfather of the plaintiff in the name of the idol, which was set up merely for his private worship in his own house without any priests to perform regularly any religious service for the public benefit of Hindus, and that the property had been dealt with all along as his own private property. *Held* that this was a mere nominal endowment, and consequently the alienation thereof was not invalid. *Held* also, that a property purchased by a man in the name of his own idol, which no one except himself has the power or right to worship, is not the property of the idol, but the property of the person who purchased it. *BEJOISOONDERY DEBIA v. LUCHMEE KONWARES*

[15 B. L. R., P. C., 176, note: 20 W. R., 95

Affirming the decision of the High Court

[2 B. L. R., A. C., 155: 11 W. R., 13

15. ——— Land dedicated to idol.—

Alienation of land and idol.—*Suit for recovery of the land.*—Plaintiff sued to recover certain land, alleged to be debutter and dedicated to a family idol which had been alienated together with the idol by his father, and purchased by the defendant. He did not sue to recover the idol. *Held* that the plaintiff could not recover the land without the idol, and replace the latter, treating it as lost or destroyed, by a new one, inasmuch as, according to Hindu law, when an idol has once been consecrated by appropriate ceremonies, the deity of which the idol is the visible image resides in it, and not in any substituted image. *DOORGA PRESHAD DOSS v. SHENO PROSHAD PANDAH* . . . 7 C. L. R., 278

16. ——— Land enjoyed as private property though attached to karnam.—

Suit to recover after ejectment.—Plaintiff brought a suit to recover land which had been enjoyed by her husband, the karnam of a village, but which on his death had been given to the defendant, with the office of karnam. The land had been originally attached to the office, but the plaintiff's husband for a long time before his death was enjoying the land as his private property. *Held* that the miras of the land continued to be attached to the office, notwithstanding that it may have been for some time enjoyed as private property; that the property, being annexed to the office, was indivisible, and as the Collector, in ejecting the plaintiff, appropriated the land to the office by putting it in the possession of the karnam whom he appointed in place of the plaintiff's husband, the plaintiff had no right to recover. *SESHAIYA v. GAURANMA* . . . 4 Mad., 336

3. NON-PERFORMANCE OF SERVICES.

17. ——— Non-performance of conditions of trust.—*Effect of, on trust.*—If a trust or

HINDU LAW — ENDOWMENT — continued.**3. NON-PERFORMANCE OF SERVICES—continued.****Non-performance of conditions of trust—continued.**

endowment be created *bond fide*, the mere fact that the parties in possession of the trust or endowed property do not carry out the conditions of the trust does not invalidate the transactions. *KASHESHUREE DASSEE v. KRISHNAKAMINEE DASSEE* . 2 Hay, 557

18. ——— Failure to perform services of idol.—

Result of refusal to perform.—*Suit for khas possession.*—A party holding land assigned for the support of an idol subject to the performance of the ceremonies of worship of the idol, who fails to perform the required service, may be compelled to do so, and on refusal may be removed; but such refusal would not enable a party claiming the land under a fresh assignment from a descendant of the original grantor to recover possession by a suit. *MOHESH CHUNDRA CHUCKERBUTTY v. KOYLASH CHUNDRA CHUCKERBUTTY* . . . 11 W. R., 448

19. ——— Suit for khas

possession.—Where land has been given as debutter land and the requisite services are not performed, all that the donor can do is to take steps to have the services performed; he cannot recover it in a suit for khas possession. *GOPENATH CHOWDHRY v. GOOROO DOSS SURMA* . . . 18 W. R., 472

See *RAM NARAIN SING v. RAMOON PAUREY*

[28 W. R., 79

4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT.**20. ——— Principles to be observed in dealing with endowments.—**

Mad. Reg. VII of 1817.—The important principle to be observed by the Courts in dealing with the constitution and rules of religious brotherhoods attached to Hindu temples is to ascertain, if possible, the special laws and usages governing the particular community whose affairs have become the subject of litigation and to be guided by them. The superintending authority over religious endowments exercised by the old rulers of the country passed to the British Government; and Madras Regulation VII of 1817 merely defined the manner in which that power was to be thenceforth exercised. *MUTTU RAMALINGA SETUPATI (ZEMINDAR OF RAMNAD) v. PERIANAYAGUM PILLAI*

[1 L. R., 1 I. A., 209

21. ——— Mode of holding office and management, Proof of.—

Gift of an idol.—*Evidence of conditions of gift.*—The mode in which the offices of priest and manager have been held for many generations is material evidence of the conditions on which the original gift of an idol was made. *NIMAYE CHURN POONJAREE v. MOOROOLNEE CHOWDHRY*

[1 W. R., 108

22. ——— Power of control of Odhikaree by general body of Bhukuts.—*Power of Odhikaree to remove Bhukuts.*—In a suit by the

HINDU LAW — ENDOWMENT — continued.**4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—continued.****Power of control of Odhikaree by general body of Bhukuts—continued.**

Bhukuts of the Komolabari Shaster in Assam for confirmation of their rights in that endowment and restoration of possession thereof, it was held that the plaintiffs had failed to make out their title; that by the original grant of Rajah Luckee Singh, inscribed on a copper plate, the management of the debutter property was entrusted to the Odhikaree, over whom the Shormoho or general body of Bhukuts have no control, either in respect to his duties as the religious head of the Komolabari Shaster or in the management of its revenues. *Held* that the Odhikaree could not turn the Bhukuts out of the Shaster without just cause. **DOOTHERAM SURMA DOOREE v. LUCKEE KANT GOSSAMEE** . 12 W. R., 425

23. ——— Proprietorship of endowed property.—Religious communities at Benares and Tirpuntal, Status of.—The mohunt of the muth at Tirpuntal, zillah Tanjore, in the Madras Presidency, sued the mohunt of the muth at Benares in the Civil Court of zillah Benares, for the right to manage, as proprietor, the muth and chutter affairs at Benares, and the temple of Sri Kedareswur, and to recover property belonging thereto, and to have an account of receipts and disbursements relative to the same: such relief being claimed by virtue of his proprietary right as mohunt and guddenashin of the head-quarters muth at Tirpuntal under whose jurisdiction and power the chutter institution at Benares had continued from time immemorial. The defendant denied the plaintiff's claim to the immoveable property and endowment which he represented as acquired by his ancestors, the mohunt guddenashins at Benares and himself. He denied that he was an agent and claimed to be the real proprietor in possession and occupation by right of succession to his ancestors. The first Court decreed the plaintiff's claim. The High Court modified the decree, giving the plaintiff possession of certain chutters and gardens built or purchased out of funds remitted from Madras, and declaring him entitled to an account of a sum admitted to have been remitted from Tirpuntal, but holding that he had failed to make out possession of the muth, temple, or other property. *Held* that the original foundation having been admittedly at Benares which is the holy place, and the object having been to afford to persons either resident in the south of India or making pilgrimage to Benares, facilities for worship and religious duties there, raised a presumption that the establishment at Tirpuntal was subordinate to that at Benares. And that it was not shown that any change had been effected in the original constitution of the community. *Held* that the nature of the relation between the muths at Tirpuntal and Benares was that the former fed the establishment at the latter, the object of which was to afford facilities to pilgrims and others wishing to pay their devotions at Benares. The result was that the establishment at Tirpuntal collected alms and remitted them to Benares, producing complicated exchange transactions between the

HINDU LAW — ENDOWMENT — continued.**4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENTS—continued.****Proprietorship of endowed property—continued.**

two establishments. *Held* that the plaintiff had failed to establish either that he was the proprietor of the property at Benares, or that the defendant was his mere agent, and that the High Court was right in limiting the relief to what was included in the decree. **KASHI BASHI RAMLING SWAMEE v. CHILUMBERNATH KOOMAR SWAMEE** . 20 W. R., P. C., 217

24. ——— Mode of enjoyment of endowed property.—Decree or agreement made to bind successive owners.—A Court has no power to bind in perpetuity all the successive owners of an endowment as to the mode in which their property should be managed; and the shebait of a debutter endowment may make such arrangement for its management as is consistent with their duties, but they cannot make it binding for ever upon all their successors. **BUNWARER CHAND THAKOOR v. MUDDEN MOHUN CHUTTORAJ** . 21 W. R., 41

5. SUCCESSION IN MANAGEMENT.

25. ——— Appointment of shebait.—Power of owner to appoint.—The owner of an idol is entitled to appoint anybody he likes to perform its poojah; the mere fact of a party and his ancestors having done so for a long period creates no right in his favour. **INDURJEET KOOR v. CHUNDERMUN MISSE** . 16 W. R., 99

26. ——— Succession to management.—Devolution of property of idol on death of mohunt.—The general principle regulating the devolution of property belonging to a muth, on the death of the mohunt, is that a virtuous pupil takes the property. In some instances the mohuntship descends to a personal heir, and in others, to a successor appointed by the existing mohunt; but the ordinary rule is that muths of the same sect in a district, or having a common origin, are associated together, and on the occasion of the death of one mohunt, the others assemble to elect a successor either out of the disciples of the deceased, or from those of another mohunt. **GOSSAIN DOWLAT GERR v. BISSESSUR GERR**

[19 W. R., 215]

27. ——— Death of mutwalli without nominating successor.—Where the mutwalli of an endowment dies without nominating a successor, the management must revert to the heirs of the person who endowed the property. **PET KOOHWAR v. CHUTTER DHAREE SINGH** . 13 W. R., 396

28. ——— Succession of mohunts.—Custom.—With regard to the succession of mohunts the only law to be observed is to be found in custom and practice which must be proved. Where the plaintiff failed to prove that the deceased mohunt had the power to appoint his successor, and that the sect to which he belonged were bound to instal the

HINDU LAW — ENDOWMENT — continued.**5. SUCCESSION IN MANAGEMENT—continued.****Succession to managership—continued.**

disciple whom he had selected,—*Held* that his suit must be dismissed. *GENDA PURI v. CHEHATAR PURI* [L. R., 13 I. A., 100; I. L. R., 9 All., 1

29. ——— *Trustees with power of appointment.—Failure to appoint.*—*A.*, a Hindu, by a deed of wuknama (deed of endowment), after reciting that he had “erected and prepared a thakurbari (temple) and the image of thakur (idol), and also a sadavart (almshouse), and had in way of wukf (endowed property) dedicated certain property for the performance of the pujah (worship) of the said thakur and repairing of the house, flower garden, and thakurbari, and appointed his sister (*B.*) the manager and mutwali (trustee) of the same, authorised *B.* to spend the profits in the performance of the pujah, &c. As for the future, she (*B.*) should appoint such person to be the manager and mutwali as may be found by her to be fit, &c., and in like manner all successive mutwalis should have the right of appointing successive mutwalis. To these his heirs should not have right to prefer any claim, &c.” *B.* died without having appointed any mutwali (trustee) to succeed her in the management of the trust. In a suit by the heir of *B.* to obtain possession of the property covered by the deed against the heirs of *A.*,—*Held* that the managership, on failure of appointment of a trustee, reverted to the heirs of the person who endowed the property. *JAI BANSI KUNWAR v. CHATTER DHARI SINGH*. 5 B. L. R., 181

30. ——— *Custom or practice of sect.*—When the property is of the nature of an endowment, a claim to succeed under the ordinary Hindu law of inheritance was not maintainable. Plaintiff might have sued to get the management of the property in preference to the defendant, a widow, by the custom or practice of the sect. *GOOSAMEN SREEN CHOUNDAWALNEE BAHOOJEE v. GIRDHAREEJEE*. 3 Agra, 226

Affirmed by Privy Council in *GOPTEE LALL v. CHUNDRAOOLNEE BAHOOJEE*. 11 B. L. R., 391

31. ——— *Succession to hereditary office.*—*J.* held the office of patil more than fifty years ago as representative of two branches descended from a common ancestor, and then united in interest, there being two other branches descended from the same ancestor, but severed in interest from those represented by *J.* *J.* having died in 1824 was succeeded by his son *T.* without any opposition from the two other branches. *T.* was temporarily displaced from the office by *G.*, who represented the two other branches, but recovered it in 1850. In an action brought by the plaintiff as representative of *G.* in 1873 to establish his claim to the office held by *T.*'s sons, it was contended on behalf of plaintiff, in answer to defendant's plea of limitation, that in the absence of evidence of the circumstances under which *T.* succeeded to the patilship, *T.* must be presumed to have been nominated to that office by all the members of the watandar family jointly, or with their assent sought and

HINDU LAW — ENDOWMENT — continued.**5. SUCCESSION IN MANAGEMENT—continued.****Succession to managership—continued.**

granted, and was consequently the representative of all of them. *Held* that the succession of a son to his father in an hereditary office is primarily to be referred to a right based on the relation subsisting between them just as would be the son's succession to his father's property. *GIRIAPA v. JAKANA* [12 Bom., 172

32. ——— *Temple.—Hereditary trustee.—Title.—Proof.*—*Mad. Reg. VII of 1817.*—The mere succession of a son to a father in a trusteeship of a temple does not create an hereditary right. *Quare.*—Whether, as long as Regulation VII of 1817 was in force, it was competent to Government absolutely to divest itself of the obligations imposed on it by that Regulation. *Venkatesa Nagudu v. Shri Shatagopaswami* (7 *Mad.*, 77), observed on. *APPARANI v. NAGAPPA* [I. L. R., 7 *Mad.*, 499

33. ——— *Right of females to succeed to polliam.—Custom.*—Females are not precluded by any rule of descent, custom, or usage of the Cumbala Tottier caste from succeeding to a polliam. *COLLECTOR OF MADURA v. VEEHACAMMOO UMMAI*. 9 Moore's I. A., 448

34. ——— *Right of female to perform services.—Appropriation of annuity of endowed property.*—In a suit by the widow of one of the descendants of the grantee of a varshasan annual allowance paid from the Government treasury for the performance of religious service in a Hindu temple to recover arrears due to her husband's branch of the family from another descendant who had received the whole stipend; and where it was found by the Court below that, by the usage of the family, the duties of the office had been performed in rotation, and the stipend distributed amongst the descendants of the grantee in certain fixed portions,—*Held* that it was not competent to the defendant (the special appellant) to raise the question of the non-divisibility of the varshasan. *Quare.*—Whether the appropriation of an annuity which is in the nature of a religious endowment as private property is justified by Hindu law. *Quare.*—Whether a Hindu female is competent to perform either in person or vicariously the services for the maintenance of which a religious endowment has been granted. *KASHAVERHAT v. BHAGIRATHIBAI* [3 Bom., A. C., 75

35. ——— *Liability of officiating priest to account for fees.—Sale of hereditary office.—Females.*—Where a priest wrongfully officiates for another and receives fees, he is bound to account for them to the rightful priest where such fees are by custom attached to the office. The sale of an hereditary priestly office will be upheld where the purchasers are the next in succession from the vendor to such office. *Semble.*—That a hereditary priestly office descends in default of males through females. *SITARAMBHAT v. SITARAM GUNESH* [6 Bom., A. C., 250

**HINDU LAW — ENDOWMENT — con-
tinued.****5. SUCCESSION IN MANAGEMENT—continued.****Succession to managership—continued.**

36. ————— Right of female to succeed to priestly office.—*Quere.*—Whether, according to Hindu law, a woman can succeed to a priestly office? *JOY DEB SURMAH v. HUROPUTTY SURMAH* **16 W. R., 252**

37. ————— Right of female to be adhkaree.—*Vyavasthas.*—A woman who has given muntros which have been accepted, and was nominated by her deceased husband to be adhkaree, is not prevented by the Hindu law from being so. *Vyavasthas* need not be called for, nor local testimony relied on, to prove the doctrines of Hindu law. *POORUN NARAIN DUTT v. KASHEESURE DASS* **[3 W. R., 180]**

38. ————— Succession of Hindu widow as shebait.—*Custom.*—In a suit by a Hindu widow to recover possession of certain property dedicated to idols, as heir to her deceased husband, the last shebait, it appeared that the plaintiff's husband was an adopted son of his predecessor in office, and that he was the eldest son of the first defendant who was the nearest male cognate of the adoptive father. On behalf of the defendant it was contended that the right of succession to a shebaitship was not governed by the ordinary rules of inheritance, and that the plaintiff had no title thereto. *Held* that a Hindu widow could not succeed to a shebaitship as heir to her husband without proof of special custom. In this case there was no sufficient proof of such custom. *JANOKI DEBI v. GOPAL ACHARJIA* **[I. L. R., 2 Calc., 365]**

Held, on appeal to the Privy Council, that where, owing to the absence of documentary or other direct evidence, it does not appear what rule of succession has been laid down by the endower, it must be proved by evidence what is the usage. In the present instance the usage did not support the claim; and, upon the evidence, the claimant, who was out of possession, failed to make a title. *JANOKI DEBI v. GOPAL ACHARJIA GOSWAMI* **[I. L. R., 9 Calc., 766; 13 C. L. R., 30]**

39. ————— Mohunt.—*Appointment of successors.—**Conditional appointment invalid.*—A mohunt by his will appointed *L.*, his spiritual brother, to be his successor, and after making such appointment his will thus continued: "Amongst all my disciples I think *G.* is a little intelligent and clever, but of younger age than befits a mohunt. Should he receive instruction and learn the duties of mohunt under your guidance he might probably be competent. Wherefore I direct that you will keep *G.* with you, and initiate him well in the duties of a mohunt, and when you feel yourself incapable of conducting the business as above, you can appoint *G.* as mohunt in your place, and not otherwise." *Held* by the High Court, first, that a mohunt may appoint a spiritual brother, and *L.*, being a spiritual brother, the appointment was valid, and he was entitled to succeed upon the testator's death. *Se-*

**HINDU LAW — ENDOWMENT — con-
tinued.****5. SUCCESSION IN MANAGEMENT—continued.****Succession to managership—continued.**

condly, that the direction for appointing *G.* did not of itself vest the mohuntship in *G.*, but that the intention of the testator was that *L.* should not appoint him if he should turn out to be in his opinion incompetent. Thirdly, that the testator had no power to attach any such conditions to the interest his appointee should enjoy in the mohunt. For a person having a fee simple in an estate, with the power of appointing to the succession, has no right to annex to it conditions which the person who gave him the power of appointment never gave the power to annex. In the absence of such power, therefore, a mohunt who once nominates his successor has no right to give directions to his successor, when his turn to nominate comes, as to whom he should nominate. Fourthly, that the testator having no power to give any directions as to the person who should be *L.*'s successor, *L.* was entitled, after he had succeeded to the gaddi, to appoint as his successor a person other than *G.* Fifthly, that even, if by custom a power to appoint two mohunts in succession had been established, still under the words of the will a discretion would have been left to *L.* in the choice of his successor, and he would not have been bound to appoint *G.* It seems that in a suit for the recovery of an elective mohuntship to which the plaintiff claims to be mohunt, but does not show that he was elected, but merely that the defendant was not elected or was irregularly elected, the Court ought to dismiss the suit, and has no jurisdiction to direct a new election. *Held* by the Privy Council on appeal, that the will did not give *G.* an absolute, positive, unqualified right at any time to the mohuntship, even on the incapacity of *L.* to perform the duties of mohunt; that until *L.* became incapable no trust or duty was created; that even when he became incapable it was no more than a gift in the nature of a precatory trust. *Held* also, on the evidence, that *G.* had failed to establish his own title to be mohunt, and that the suit was so framed that in it he could not recover the mohuntship on the mere infirmity of defendant's title. The only law as to mohunts and their offices is to be found in custom and practice which is to be proved by evidence. There cannot be two existing mohunts, and the office cannot be held jointly. *GREENHARNE DASS v. NUNDOKISHORE DASS* **[Marsh., 573; 2 Hay, 638]**

And on appeal to Privy Council

[8 W. R., P. C., 25; 11 Moore's I. A., 405]

40. ————— Ascetic.—*Alteration of succession.*—An ascetic, a mere life-tenant, cannot alter the succession to an endowment belonging to ascetics, by an act of his own in connection with the status under which he originally acquired the trust. *RUMUN DASS v. ASHUL DASS* **[1 W. R., 190]**

41. ————— Succession to mawrahi mohunt.—*Appointment of mohunt.—**Ceremonies.—**Revocation of nomination of chela.—**Dis-*

HINDU LAW — ENDOWMENT — continued.**5. SUCCESSION IN MANAGEMENT—continued.****Succession to managership—continued.**

qualification of mohunt.—In the cases of a mairasi muth, the investiture by the leading neighbouring mohunts, at the Bandhara ceremony, of one who cannot prove that he was actually appointed by the last mohunt, is not sufficient, in the absence of proof that he has a right to be so appointed as being senior chela of the last mohunt, to entitle him to succeed to the guddi. The succession to muths or religious endowments must be regulated in each case by the nature of the endowment, and the rule of succession prescribed by the founder of the institution, and if this rule cannot be discovered from the original deed of gift or other documentary evidence, it must be proved in each case by showing what the usage has been on the occasion of each succession. A mohunt of a mairasi muth, by a deed of gift in 1840, made over all the property of the muth to his senior chela and invested him with the chudder of mohunti; but subsequently a dispute having arisen on account of the immoral life led by the appointee, a compromise was effected, by which the former mohunt was permitted to take back the muth and the property belonging to it, the other being allowed merely to retain possession of a subordinate muth. In 1873 the mohunt died, leaving a will dated 6th May 1873, by which he appointed the defendant his successor. The original appointee thereupon obtained his own confirmation as mohunt at a Bandhara ceremony, by the neighbouring mohunt, and brought a suit against the defendant who was in possession for recovery of possession of the muth and the properties belonging thereto, relying on the deed of gift of 1840. *Held* that the muth being mairasi, the plaintiff was not entitled to possession, there being no reason why the deed of gift should not be considered to have been cancelled by the compromise or by the will. Questions as to whether a claimant to a muth is a Sanjogi, or whether from his conduct and mode of life he is disqualified for the office, may be determined by a Civil Court. **SITAPERSHAD DASS v. THAKURDASS** **5 C. L. R., 73**

6. DISMISSAL OF MANAGER OF ENDOWMENT.

42. — Dismissal of servant of pagodas by Dharma Karta.—*Ground of dismissal.*—The question whether there was a sufficient ground for the dismissal of a pagoda hereditary servant by a dharma karta is one of degree and not of principle, and must therefore depend upon the circumstances of each case. **KRISHNARAMY TATACHARRY v. GOMATUM RANGACHARRY** **4 Mad., 63**

7. TRANSFER OF RIGHT OF WORSHIP.

43. — Right of priest performing sradh.—The Hindu law does not declare that the priest who performs the sradh, however temporary his incumbency may be, is entitled to the land endowed in consideration of the continuous performance of the recurring ceremonies of sradh and other rites for the spiritual benefit of the donor. **RAM**

HINDU LAW — ENDOWMENT — continued.**7. TRANSFER OF RIGHT OF WORSHIP—continued.****Right of priest performing sradh—continued.**

CHUNDER CHUCKERBUTTY v. GOOROO CHURN CHUCKERBUTTY **6 W. R., 305**

44. — Transfer of right of worship to stranger.—*Duration of assignment.*—The right of worship of an idol, being the joint property of the members of the family of the endower, cannot be transferred to a third party, a stranger to the family, so as to endure beyond the life of the assignor. **UKOOR DASS v. CHUNDER SKEHUR DASS** [3 W. R., 152]

45. — Position of trustee of endowment as to transferring his trust.—*Suit for removal or appointment of trustee.*—*Act XX of 1863.*—The trustee of an endowment has not, as such, the power of transferring his trust to any other person. And where a trustee is empowered to appoint another trustee to act for him, he cannot transfer the right of exercising that power to another or others. The mode in which a suit for the removal or appointment of a manager to an endowment not coming within Act XX of 1863 should be brought stated. **KALI CHURUM GIRI v. GOLABI, 2 C. L. R., 120**, followed. **RUP NARAIN SINGH v. JUNKO BYE** [3 C. L. R., 112]

46. — Right to perform service of idol.—*Sale in execution of decree.*—A judgment-debtor's right as shebait to perform the service of an idol cannot be sold in execution of a decree; nor can his right to the surplus profits of the sheba be sold so long as that right is unascertained and uncertain. **JUGGUR NATH ROY CHOWDHRY v. KISHEN PERSHAD SURMA alias RAJA BABOO** . **7 W. R., 206**

47. — Right of shebait.—*Transferability of rights of worship in execution of decree.*—The right of a shebait of a Hindu idol to perform the services and receive the customary remuneration is not transferable, and cannot be sold in satisfaction of a decree against the shebait. **DUBO MISSEER v. SRINIBAS MISSEER** **5 B. L. R., 617**

S. C. DROBO MISSEER v. SREENIBASH MISSEER [14 W. R., 409]

48. — Transferability of rights of worship in execution of decree.—Rights of worship of a Hindu idol cannot be sold in execution of a decree for the personal debt of a shebait. **KALICHARAN GIE GOSSAIN v. BANGSHI MOHAN DAS** [6 B. L. R., 727; 15 W. R., 339]

49. — Alienation of right to officiate in temple.—*Sale in execution of decree.*—The right of managing a temple which is a religious endowment, of officiating at the worship conducted in it, and of receiving the offerings at the shrine, cannot, in default of proof to the contrary, pass outside the family of the trustee, until absolute failure of succession in his family, and such rights are therefore not

HINDU LAW — ENDOWMENT — continued.**7. TRANSFER OF RIGHT OF WORSHIP—continued.****Alienation of right to officiate in temple—continued.**

saleable in execution of decree. The principle laid down by the Privy Council in *Rajah Verma Vali v. Ravi Verma Valia Muttia*, L. R., 4 I. A., 76, followed. *DURGA BIBI v. CHANCHAL RAM* [I. L. R., 4 All., 81]

50. — Alienation of religious office.—*Right to worship idol.*—There is no reason why the alienation of a religious office to a person standing in the line of succession, and free from objections relating to the capacity of a particular individual to perform the worship of an idol or do any other necessary functions connected with it, should not be upheld. The alienation, therefore, by a divided member of a Hindu family to his sister's son, of the right of worshipping a goddess and receiving a share of the offerings was upheld. *MANOHARAM v. PRANSHANKAR* . I. L. R., 6 Bom., 298

51. — Illegal transfer to proper person of same caste and sect.—The sale of a religious office to a person not in the line of heirs, though otherwise qualified for the performance of the duties of the office, is illegal. *Manoharam v. Pranshankar*, I. L. R., 6 Bom., 298, discussed. *KUPPA GURUKAL v. DAMASAMI GURUKAL* [I. L. R., 6 Mad., 78]

52. — Sale of office and emoluments of attending to idol.—An Archaka cannot sell the office and emoluments of Paricharaka, inasmuch as they are *extra commercium*. *NARASIMMA THEATHA ACHARYA v. ANANTHA BHATTA* [I. L. R., 4 Mad., 391]

8. ALIENATION OF ENDOWED PROPERTY.

53. — Power of alienation.—*Sale for benefit of property.*—*Duty of purchasers.*—The case of a person alienating property which he holds as shebait of an idol is analogous to that of a Hindu widow alienating ancestral property, and the question as regards the power of a shebait to grant a putni of a debutter land is whether, looking to all the circumstances of the case, the alienation was a prudent and wise act in respect of the purposes for which he was shebait; and in estimating the validity of a purchase of the putni rights, it ought to be considered whether the purchasers satisfied themselves as far as they could that there was a fair and sufficient ground of necessity for the alienation. *JUGGESHUR BUTTOBYAL v. ROODRO NARAIN ROY* . 12 W. R., 299

54. — Power of mohunt to alienate.—*Right of successor against purchaser from mohunt.*—A mohunt in charge of an endowment with only a life-interest in the property cannot create an interest superior to his own, or, except under the most extraordinary pressure, and for the distinct benefit of the endowment, bind his successors in office. If a purchaser from such mohunt retained possession

HINDU LAW — ENDOWMENT — continued.**8. ALIENATION OF ENDOWED PROPERTY—continued.****Power of alienation—continued.**

after the mohunt's death, the successor to the guddi would have a cause of action against him from the date of the election; and no length of possession during the vendor's lifetime would give the purchaser a valid title as against the present mohunt. *BURN SUROOP DASS v. KHASHEE JHA* [20 W. R., 471]

55. — Position of shebait.—A shebait is in the position of trustee for the founder, and cannot create permanent encumbrances to the injury of the endowed property. No prescription derived from the trustee can in such cases run against the heirs and representatives of the founder. *PROSUNNO MOYEE DOSSEE v. KOONJO BEHARIE CHOWDREY* . W. R., 1864, 157

56. — Effect of alienation as against successor in shebaitship.—An alienation of the debutter property by one shebait was held to be void as against a successor in the shebaitship. *GOLUCK CHUNDER BOSE v. RUGHONATH SREE CHUNDER ROY*

[11 B. L. R., 337, note: 17 W. R., 444]

RUMONKEE DEBRA v. BALUCK DOSS MOHUNT

[11 B. L. R., 336, note: 14 W. R., 101]

57. — Effect of alienation.—*Necessity for alienation.*—Under the Hindu law a permanent alienation by a shebait of endowed property, such as the creation of a putni, is not absolutely null and void. A permanent alienation by a shebait of endowed property under special circumstances of necessity is valid. Want of funds for repairing the temple and restoring the image of the idol is a necessity sufficient under the Hindu law to warrant such an alienation. *TATUBUNISSA BIBI v. SHAM KISHORE ROY*

[7 B. L. R., 621: 15 W. R., 238]

58. — Effect of alienation.—*Decrees obtained against shebait.*—*Res judicata.*—As a general rule of Hindu law, property given for the maintenance of religious worship and of charities connected with it, is inalienable. It is competent, however, for the shebait in charge of property dedicated to the worship of an idol, in his capacity of shebait and as manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power to incur such debts is to be measured by the existing necessity for incurring them, the authority of the shebait being in this respect analogous to that of a manager for an infant heir. It being competent for a shebait to borrow money for necessary purposes, it follows that judgments obtained against a former shebait in respect of debts so incurred are binding upon succeeding shebaites, who form a continuing representation of the debutter property. But,

HINDU LAW — ENDOWMENT — continued.**8. ALIENATION OF ENDOWED PROPERTY — continued.****Power of alienation—continued.**

before applying the principle of *res judicata* to such judgments, the Court should be satisfied that the judgments relied upon are untainted by fraud or collusion, and that the necessary and proper issues have been raised, tried, and decided in the suits which led to them. Execution of such judgments should be decreed only against the rents and profits of the debutter property. *PROSUNNO KUMARI DEBYA v. GOLAB CHAND BABOO* . . . 14 B. L. R., 450

[23 W. R., 253: L. R., 2 I. A., 145]

Affirming the decision of the High Court in *GOLAB CHAND BABOO v. PROSUNNO KUMARI DEBYA* in which it was held, that a decree obtained *bond fide* against the shebait of an idol is binding on his successor.

[11 B. L. R., 332: 20 W. R., 86]

59. — Purchaser of endowed property, Notice to.—Evidence of necessity for alienation.—A plaintiff who seeks to set aside an alienation of lands on the ground that they are debutter, i.e., dedicated in perpetuity to support the worship of an idol, must give strong and clear evidence of the endowment. The mere fact that the rents of a particular mehal have been applied for a considerable period to the worship of an idol, is not sufficient proof that the mehal is debutter. The shebait, or manager, of a debutter estate has authority, where the purposes of the endowment require it, to raise money by alienating a part of the estate, his position being analogous to that of a manager of an infant heir under the Hindu law. The written conveyance of certain lands stated them to be debutter, and to be alienated to raise money to repair the temple of the idol. In a suit to set aside the alienation, it appeared that, at the time of the transaction, the temple required repairs, but that the vendor had not applied the whole of the purchase-money to that purpose. There being no evidence of any collusion on the part of the purchaser, or that he was aware at the time of the purchase that the money was to be applied otherwise than the conveyance expressed,—*Held* that the sale was valid. Even if it had appeared that the purchaser had notice that the whole of the purchase-money was not required for the purposes of the endowment, but that part of it was to be expended on other objects, an action would not lie to set aside the sale altogether, since the purchaser would be entitled to be reimbursed so much of the money as had been legitimately advanced. *DOORGANATH ROY v. RAM CHUNDER SEN*

[1 L. R., 2 Calc., 341
L. R., 4 I. A., 52]

60. — Right to charge endowed property.—Necessity.—Suit on bond.—A suit to recover on a bond given by the *de facto* manager of a muth as a charge on the muth having been decreed by the Subordinate Judge,—*Held* that as the obligor had turned the previous manager out of possession, and as his own right to possession was contested at the time he executed the bond, he was

HINDU LAW — ENDOWMENT — continued.**8. ALIENATION OF ENDOWED PROPERTY — continued.****Power of alienation—continued.**

in no better position than a trespasser and wrongdoer. Where a bond as a charge on a muth is given for antecedent claims against a muth, of which a portion would, but for the fresh right of suit given by the bond, have been barred by limitation, and where no proceedings have been taken for sequestration or attachment of the property, there is no necessity for giving the bond, and a suit to recover cannot succeed. *RAM CHURN POOREN v. NUNHOO MUNDUL*

[14 W. R., 147]

61. — Alienation of pagoda property by managers.—Purchasers from managers, Duties of.—The paid managers of the affairs of a pagoda have no power as such to encumber the pagoda property, or to settle large outstanding demands against it. Persons dealing with such managers are bound to enquire into the extent of their authority. A person bound to make an enquiry, and failing to do so, will be held to have notice of all such facts as that enquiry, if made, would have brought to his knowledge. *SAMBANDA MUDALIYAR v. NANASAMBANDAPANDARA* . . . 1 Mad., 298

62. — Creation of tenure at a fixed rent.—Where land is dedicated to the religious services of an idol, the rents of the land constitute in legal contemplation the property of the idol, and the shebait has not the legal property, but only the title of manager of a religious endowment, and cannot alienate the property, though he might create proper derivative tenures and estates conformable to usage. The creation of a tenure at a fixed invariable rent would be breach of duty in a shebait. *SHIBESURREE DABEE v. MOTHORANATH ACHARJEE* . . . 13 W. R., P. C., 18

[13 Moore's I. A., 270]

63. — Property, portion of profits of which is charged for religious purposes.—A property wholly dedicated to religious purposes cannot be sold; but where a portion only of its profits is charged for such purposes the property may be sold, subject to the charge with which it is burdened. *BASU DHUL v. KISSEN CHUNDER GEER GOSSAIN* . . . 13 W. R., 200

64. — Power of manager to grant putni lease.—It is doubtful whether it is competent to the manager of endowed property to grant a putni thereof. *MOTEE DOSS v. MODHOOSOODUN CHOWDREY* . . . 1 W. R., 4

65. — Power to grant lease of endowed property.—The shebait of a religious endowment is competent to lease the endowed lands and to appropriate the proceeds for the purpose of keeping up the worship of the idol, and a mokudum, under such a lease, is entitled to hold possession during the lifetime of the lessor or during such period as the latter continues to be the shebait of the endowed lands. *ABRUTH MISSEER v. JUGGURNATH INDRASWAMEE* . . . 13 W. R., 499

HINDU LAW — ENDOWMENT — continued.**8. ALIENATION OF ENDOWED PROPERTY — continued.****Power of alienation—continued.**

66. ————— *Right of priest to grant leases in his own name.*—The high priest of a religious endowment in Assam, who was only a nominee of the grantees, was held to have no right to grant leases in his own name and of his own authority. **RAM DOSS v. MOHESUR DEB MISREN** [7 W. R., 446]

67. ————— *Power to grant lease of endowed property.*—*Khadim, Tenure of endowed property by.*—Unless endowed property descends to the heirs of a deceased khadim, they can have no right to manage or interfere with the property. If a khadim has only a life-interest, any lease given by him will be in force only during his lifetime, and cannot continue without the consent of the succeeding khadim, or perhaps of the mutwallie, if he has any special right to confirm leases. **SUJAWUT ALI v. BUSHNEEROODDEEN** . 2 W. R., 189

68. ————— *Alienation of profits of debutter mahal.*—The profits of a debutter mahal may be assigned so long as the deb sheba is duly kept up. **SHREESSUREN DABHA v. BOKWITH** [3 W. R., Act X, 152]

69. ————— *Grant to Gosavi and his disciples.*—*Right of Gosavi to encumber it.*—A grant to a Gosavi and his disciples in perpetual succession, coupled with directions which practically make it an endowment of a muth with a limitation of the enjoyment to a particular line of celebrants of the worship therein, does not entitle an individual Gosavi to encumber the endowment beyond his own life. The English law relating to superstitious uses does not apply in the case of Hindu religious endowments. **KHUSALCHAND v. MAHADEVGIRI** [12 Bom., 214]

70. ————— *Property of a temple.*—*Gurakki.*—*Sale of right, title, and interest of holder.*—*Service land.*—The property of a temple cannot be sold away from the temple; but there is no objection to the sale of the right, title, and interest of a servant of the temple in the land belonging to the temple which he holds as remuneration for his service; the interest sold being subject in the hands of the alienee to determination by the death of the original holder, or by his removal from his office on account of his failure to perform the service. **LOTIKAR v. WAGLE** . I. L. R., 6 Bom., 596

71. ————— *Temporary pledge of income of endowment.*—*Creation of nibandha.*—*Quare.*—Whether a private individual as well as a royal personage may create a nibandha. A Hindu religious endowment cannot be sold or permanently alienated though its income may be temporarily pledged for necessary purposes, such as the repair, &c., &c., of the temple. **COLLECTOR OF THANA v. HARI SITARAM** . I. L. R., 6 Bom., 546

HINDU LAW — ENDOWMENT — continued.**8. ALIENATION OF ENDOWED PROPERTY — continued.****Power of alienation—continued.**

72. ————— *Mortgage of lands attached to a muth.*—*Bom. Act II of 1863, s. 8, cl. 3, Effect of declaration by Government under.*—*Power of a jangam guru to alienate land given to muth.*—*How far such alienation is binding on his successor in the office.*—The defendant was in possession of three fields (survey Nos. 222, 360, and 372) as mortgagee under mortgages executed by one G., who was the plaintiff's guru and his predecessor in office as jangam, or presiding Lingayat priest of the muth. Two of the fields (Nos. 360 and 372) had been mortgaged in 1863. G. died in 1874, and in 1882 the plaintiff brought this suit to recover possession of the fields, on the ground that it was not competent to G. to mortgage them beyond the period of his own life, and also on the ground that under clause 8 of section 8 of Bombay Act II of 1863, they were not alienable from the muth. It appeared that in 1862 a sanad was issued by Government to G. declaring the land in dispute to be his personal inam, and continuable for ever as transferable private property, subject only to chaothai and nazarana. This sanad was withdrawn in 1868, and another sanad was issued, declaring the land to be service emolument appertaining to the office of jangam, on condition that the holders thereof should perform the usual services to the community, and should continue faithful subjects of the British Government. The sanad stated as follows:—"As this vatan is held for the performance of service it cannot be transferred, and in consequence no nazarana will be levied." The nazarana, which had been levied under the sanad of 1862 for the years from 1861-62 to 1865-66, was refunded. Held that the plaintiff was entitled to recover the land in question. The circumstance of the repayment of nazarana and chaothai for the years 1861-66 clearly showed that, in the opinion of the Government, a personal inam had been wrongly granted to G. by the sanad of 1862, and there was nothing to show that G. objected to the decision ultimately arrived at by Government. After the passing of Bombay Act II of 1863 it would not have been open to him—as it was not open to his mortgagee now—to contest that decision in any way, for by section 16, clause (d), of that Act it is competent to Government to determine any question as to whether or not any lands are held for service, and the decision of Government, when once made, is final. Since 1868 there could be no question that the lands comprised in the sanad had not been alienable by the jangam of the muth beyond his lifetime, and as they belonged to a service vatan they were held on a tenure of successive life-estates. After the death of G., therefore, the plaintiff, as G.'s successor in office, was entitled to the whole of the inam land claimed by him. **JAMAL SAHEB v. MURGAYA SWAMI** [I. L. R., 10 Bom., 34]

73. ————— *Liability of savasthan of muth for money borrowed by the svami.*—The svami of a muth presumably has no private

HINDU LAW — ENDOWMENT — continued.**8. ALIENATION OF ENDOWED PROPERTY — continued.****Power of alienation—continued.**

property, and must be assumed to be pledging the credit of the muth when he borrows money for the purposes of the muth. Proper purposes are to be determined by the usage and custom of the muth.

SHANKAR BHARATI SVAMI v. VENKATA NAIK

[I. L. R., 9 Bom., 422]

74. — Effect of execution proceedings against successor.—In 1866 *V.* (the father of the plaintiff) sued his brothers *H.* and *G.* (one of the two sons of *H.* and defendant No. 1), to establish his right to a third share of the management of certain lands granted for the maintenance of a Hindu temple. In that suit *V.* obtained a decree that he should have the exclusive management every third year, but was ordered to pay costs. To enforce payment of these costs, *H.*, in execution of the decree, attached the third share of *V.* in the management of the land. The share was accordingly sold by auction in January 1870, to a Marwadi, who afterwards, in May 1870, re-sold it to the appellant *T.* (another son of *H.* and defendant No. 2). *V.* died in 1876. In 1879 the plaintiff sued *G.* and the appellant (the two sons of *H.*) for his share of the management. It was contended for the defence that as the execution sale of January 1870 was not set aside within a year, the right to treat it as void by the plaintiff was barred by lapse of time. *Held* that in cases of endowments, when the founder has vested in a certain family the management of his endowment, each member of it succeeds to the management *per formam doni*, and that, therefore, on *V.*'s death, the plaintiff's right to succeed to the management was quite unaffected by any proceedings in execution against *V.* during his life. **TRIMBAK BAWA v. NARAYAN BAWA**

[I. L. R., 7 Bom., 188]

75. — Mad. Reg. XXIX of 1802.—Mirasi karnam.—Emoluments.—Alienation.—The lands attached to, and forming the emoluments of, the office of karnam in permanently-settled estates cannot be alienated by the holder of the office to the prejudice of his successor. **MUFFIDI PAPAYA v. RAMANA**

I. L. R., 7 Mad., 85

76. — Power of Archakas of pagoda to alienate in order to alter form of worship.—Legal necessity for alienation.—It is not competent to the Archakas of a pagoda of their own authority to make an alienation for the purpose of altering the form of worship in the pagoda, or in contemplation of such alteration. Any assignment of the office must carry with it the duty of continuing the form of worship hitherto observed. **VENKATARAYAN v. SRINIVASA AYYANGAR**

[7 Mad., 32]

77. — Liability of son for father's debt.—Service inam of father enfranchised in favour of son.—In execution of a money decree obtained against *M.*, as representative of his

HINDU LAW — ENDOWMENT — continued.**8. ALIENATION OF ENDOWED PROPERTY — continued.****Power of alienation—continued.**

deceased father, the creditor attached and sold certain land which, having been in the possession of the father as the emolument of the office of karnam, was, after his death, enfranchised by Government and granted to *M.* and his brother.—*Held* that the land was not liable to be sold in execution of the decree. **KRISHNAYA v. CHINNAYA**

I. L. R., 7 Mad., 597

78. — Debt contracted by head of mattam.—Liability of his successor in office.—The property belonging to a mattam is in fact attached to the office of mattamdar and passes by inheritance to no one who does not fill the office. Though it is in a certain sense trust-property, the superior has large dominion over it, and is not accountable for its management nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution. Acting for the whole institution, he may contract debts for purposes connected with the mattam, and debts so contracted might be recovered from the mattam property, and would devolve as a liability on his successor to the extent of the assets received by him. The origin of mattams discussed and explained. **SAMANTHA PANDARA v. SELLAPPA CHETTI**

[I. L. R., 2 Mad., 175]

HINDU LAW—FAMILY DWELLING-HOUSE.

See CASES UNDER EXECUTION OF DECREES —MODE OF EXECUTION—JOINT PROPERTY.

See PARTITION—MODE OF EFFECTING PARTITION . I. L. R., 3 Calc., 514

1. — Right of widow to reside in family-house.—Maintenance.—Obligation of sons to provide her with residence.—Although a Hindu widow is entitled to look to her sons to furnish her with a residence, she cannot insist on a right to live in any particular house. **MOHUN GHEB v. TOTA**

[4 N. W., 158]

2. — Right of son to eject widow.—Doctrine of factum valet.—A Hindu died leaving a widow and an adopted son, who continued, after his death, to reside in the same dwelling-house in which they had resided with the deceased during his lifetime, and which formed a portion of his estate. The son being an infant, the widow had the management of the house, and let a portion of it to tenants at a monthly rent. Subsequently the son sold the house, as his property by inheritance, to a stranger, who gave the widow and tenants a week's notice to quit. *Held* that the son, even if he had attained his majority, could not evict the widow, or authorise a purchaser to do so, without providing some other suitable dwelling for her; nor in any case could the tenants be turned out without

HINDU LAW—FAMILY DWELLING-HOUSE.—Right of widow to reside in family-house—continued.

a month's notice. It seems that the passage in *Katayana* (2 *Colebrook's Digest*, p. 139) is a restriction, and not a moral precept only, and that the heir of the deceased has not such a right in the dwelling of the family that he can at once, of his pleasure, turn out the females of the family, or sell it and give the purchaser a right to turn them out.

MANGALA DEBI v. DINANATH BOSE

[4 B. L. R., O. C., 72; 12 W. R., O. C., 35]

3. ——— *Right of auction-purchaser to eject widow.*—A Hindu widow, who resides with her husband and the members of his family in the family dwelling-house while he is alive, is entitled to reside therein after his death, and cannot be ousted by the auction-purchaser of the rights and interests in the house of her husband's nephew.

GAURI v. CHANDRAMANI . I. L. R., 1 All., 262

4. ——— *Ancestral property.—Mortgage.—Sale in execution of decrees.*—*L.*, a Hindu, mortgaged the dwelling-house of his family, such dwelling-house being ancestral property. *Held*, in a suit against *L.*'s mother and wife to enforce the mortgage, brought after *L.*'s decease, that the mortgage could be enforced. *Mangala Debi v. Dinanath Bose*, 4 B. L. R., O. C., 72, and *Gauri v. Chandramani*, I. L. R., 1 All., 262, distinguished. *Bhikham Das v. Pura* . I. L. R., 2 All., 141

5. ——— *Auction-purchaser, Right of.*—The widow of a member of a joint Hindu family can claim a right of residence in the family dwelling-house, and can assert such right against the purchaser of such house at a sale in execution of a decree against another member of such family. *Gauri v. Chandramani*, I. L. R., 1 All., 262, and *Mangala Debi v. Dinanath Bose*, 4 B. L. R., O. C., 72, followed. *Talemand Singh v. Rukmina*

[I. L. R., 3 All., 353]

6. ——— On the 29th June, 1876, the plaintiff obtained a money decree by consent against *E.*, the father-in-law of the defendant. On the 24th of July, 1876, the plaintiff attached a house of *E.* On the 12th October 1876, the defendant sued *E.* for maintenance, and alleged that the house in question was the property of her deceased husband and *E.*, and she claimed the right to continue to live in it. On the 10th of November 1876, and during the pendency of the defendant's suit against *E.*, the house was sold under the plaintiff's decree against *E.*, and the plaintiff himself became the purchaser. On the 20th of June 1877, the defendant obtained a decree against *E.* in terms of the prayer of her plaint. On the 27th of August 1879, the plaintiff brought the present suit to eject the defendant from the house. *Held* that what the plaintiff bought from *E.* was his right, title, and interest in the house, which, being subject to the decree in the defendant's pending suit, the plaintiff's purchase was likewise subject to the same, and the circumstance that the plaintiff had placed a prior attachment on the house made no difference. The

HINDU LAW—FAMILY DWELLING-HOUSE.—Right of widow to reside in family-house—continued.

plaintiff therefore could not eject the defendant during her lifetime. *PARVATI v. KISANSING*

[I. L. R., 6 Bom., 567]

7. ——— *Purchaser from the heir with knowledge.—Widow's right of residence a charge on the property.*—Where a purchaser purchases a house, the property of a Hindu family, from the heir, with full knowledge that the widow is residing and being maintained in it, such purchaser cannot ask for the summary eviction of the widow from the house, even though there may be other property in the hands of the heir out of which her maintenance could be derived, but the purchaser takes the house subject to the right of the widow to continue to reside therein. *Lakshman Ramchandra Joshi v. Satyabhamabai*, I. L. R., 2 Bom., 494, distinguished. *DAISUKHRAH MAHA-SUKHRAH, v. LALLUBHAI MOTICHAND*

[I. L. R., 7 Bom., 262]

HINDU LAW—GIFT.

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| 1. REQUISITES FOR GIFT | 2260 |
| 2. GIFTS <i>MORTIS CAUSA</i> | 2263 |
| 3. POWER TO MAKE AND ACCEPT GIFTS | 2264 |
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See HINDU LAW—JOINT FAMILY.

[I. L. R., 1 All., 429]

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILL.

See HINDU LAW—WILL—POWER OF DISPOSITION—DISHERISON.

[I. L. R., 1 Bom., 580]

See MALABAR LAW—GIFT . 6 Mad., 194

[I. L. R., 7 Mad., 315]

1. REQUISITES FOR GIFT.

1. ——— *Gift of freehold to heirs.—Words of inheritance.*—By Hindu law no words of inheritance are necessary to pass a freehold interest in land to the heirs. *ANUNDOMOHEY DOSSEN v. DORD EAST INDIA COMPANY*

[4 W. R., P. C., 51; 8 Moore's L. A., 43]

2. ——— *Gift to wife.—Words of inheritance.—Husband and wife.—Immoveable property.*—It is not necessary in Hindu law, in order that a wife should take an absolute estate in immoveable property under a deed of gift from her husband, that the gift should be made with such words of limitation as are ordinarily used to convey an estate of inheritance. The intention of the husband may be expressed in other ways, and is a matter of construction merely. *Koonj Behary Dhur v. Prem Chand Dutt*, I. L. R., 5 Cal., 684; 5 C. L. R., 561, distinguished. *RAM NARAIN SING v. PRABHU BHUGUT*

[I. L. R., 9 Cal., 830; 13 C. L. R., 109]

HINDU LAW—GIFT—continued.**1. REQUISITES FOR GIFT—continued.**

3. ——— Verbal grant of land with possession.—A verbal grant of land followed by possession is valid under the Hindu law. *ANONYMOUS* . . . 1 Ind. Jur., O. S., 135

4. ——— Possession, Necessity of.—*Seisin, Absence of.*—The absence of seisin is no objection to the validity of a gift by a Hindu. Where a cadet member of the Doomsan family gave, for the support of his illegitimate sons, certain properties which he purchased out of the savings and profits of his ap-
panage, even admitting that he was in possession of such properties during his lifetime, his possession would be that of a trustee for his illegitimate sons. *MOHESHV BUKSH SINGH v. GUNOON KOONWAR*. [6 W. R., 245]

5. ——— Gift of land.—A gift of land is not complete, by Hindu law, without possession or receipt of rent by the donee. *HARJIVAN ANANDRAM v. NARAN HARIBHAI* [4 Bom., A. C., 81]

6. ——— Gift of land.—*Receipt of rent.*—To make a gift of land complete under the Hindu law, there must be either possession or receipt of rent by the donee. The receipt of rent may be by an agent, and, if the transaction is *bond fide*, it is immaterial that such agent has before the gift received the rent for the donor. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. PREMCHAND RAICHAND. AMRDBHAI HUBIBHAI v. PREMCHAND RAICHAND* . . . 5 Bom., O. C., 83

7. ——— Possession retained by donor.—*Transfer of possession.*—*Symbolical transfer.*—A gift by a Hindu unaccompanied either by possession on the part of the donee or any symbolical act, such as handing over documents of title, or permitting the donee to receive rents, is not in itself a valid transaction, even though the deed of gift be registered. *DAGAI DABEE v. MOTHURA NATH CHATTOPADHYA* [I. L. R., 9 Calc., 854; 12 C. L. R., 530]

8. ——— Gift of land.—*Registration, Effect of.*—The plaintiff sued for possession of certain lands, alleging that they had been given to him under a deed of gift registered. It was found that no possession was given to him under the deed. It was contended for him that his title was complete without possession, as the deed had been registered, and that the object of the rule as to possession was to give publicity to the transaction. *Held* that the plaintiff was only entitled to the land of which he had been put into possession. According to Hindu law, in order to give complete validity to a gift of land as between donor and donee, the donee must be put into possession. Registration gives the donee neither actual, constructive, nor symbolical possession, and, therefore, cannot be regarded as equivalent to delivery and acceptance. *VASUDEV BHAT v. NARAYAN DAST DAKLE* . . . I. L. R., 7 Bom., 181

9. ——— Want of change of possession.—*Trust.*—An instrument was executed

HINDU LAW—GIFT—continued.**1. REQUISITES FOR GIFT—continued.****Possession, Necessity of—continued.**

by the defendant, a Hindu, to his wife, stipulating that the defendant and his wife should continue to enjoy certain immoveable property jointly, with a right of survivorship, and containing a promise by the defendant to surrender the property to his wife if he married again. *Held* that the instrument did not operate by way of gift, there being no change in the possession of the property, nor as a declaration of trust, and that it did not create a binding obligation which the law would enforce. *Quere*,—Whether the Hindu law admits of the applicability of the principle on which Courts of Equity in England hold voluntary declarations of trust to be binding against the declarant. *VENKATTACHELLA MANIYAKABER v. THATHAMMAL* . . . 4 Mad., 480

10. ——— Gift not followed by actual possession.—A Hindu merchant made an absolute and immediate gift of all his property to the widow of his daughter's grandson who lived with him, and in regard to whom he stood *in loco parentis*. It did not appear that the gift had been followed by possession, and the donor continued to carry on the business in his own name, until his death, which happened some two years afterwards. *Held* that the gift was valid. *Anunchand Rai v. Kishen Mohun Bunoja*, 1 *Sel. Rep.*, p. 152, cited and followed. *TARA BEBEE v. GHASIRAM* . . . 8 C. L. R., 247

11. ——— Gift giving right to obtain possession.—*Held* that, consistently with the authorities in the Hindu law, a gift, where the donor supports it, the person who disputes it claiming adversely to both donor and donee, is not invalid for the mere reason that the donor has not delivered possession; and that where a donee, or vendee, is, under the terms of the gift, or sale, entitled to possession, there is no reason why such gift or sale, though not accompanied by possession, whether of moveable or immoveable property (where the gift or sale is not of such a nature as would make the giving effect to it to be contrary to public policy), should not operate to give the donee, or vendee, a right to obtain possession. *KALIDAS MULLICK v. KANHAYA LAL PUNDIT* I. L. R., 11 Calc., 121; I. L. R., 11 A. A., 218

12. ——— Construction of deed of gift.—*Gift with possession.*—*S.*, on 23rd September 1874, executed an instrument of gift in favour of his two daughters and his adopted son, whereby he gave them "his houses and shops and other moveable and immoveable property and his loan transactions" in equal one-third shares. At this time he was possessed of a one-third share in a certain partnership business. After the death of *S.*, *M.*, one of the daughters, sued *N.*, the adopted son, for one-third of her father's property including his share in the partnership business.—*Held* that, inasmuch as the donor had relinquished the subject of the gift, so far as he could, and had vested it in the donees, possession under the gift had passed to *M.* *Held* also on the construction of such instrument that it did not give *M.* a share in her father's partnership business. *MAN BHARI v. NAUNIDH* . . . I. L. R., 4 All., 40

HINDU LAW—GIFT—continued.**1. REQUISITES FOR GIFT—continued.****Possession, Necessity of—continued.**

13. ———— *Declaration by donor to one in physical possession.*—Where one of several joint donees is already in physical occupation of the subject-matter of an intended gift, a declaration by the donor to the donee so in occupation, assented to by such donee, that he has parted with the possession in favour of the donees, converts mere occupation into possession, and amounts to a valid gift under the Hindu law. *BAI KUSHAL v. LAKHMA MANA* [I. L. R., 7 Bom., 452]

2. GIFTS MORTIS CAUSA.

14. ———— *Donatio mortis causa.*—*Gift inter vivos.*—A Hindu on his death-bed, a few days before he died, caused certain Government paper to be given to his son in his presence in these words: "Bring out the papers, and give them to my son;" but he did not make or direct endorsement thereof. Subsequently, being asked to endorse them, he said, "I am very weak; how can I sign so many papers? When I get a little strength I will sign them. What cause have you for being anxious?" *Held* by PHAR, J., that it was a good *donatio mortis causa*. A *donatio mortis causa* has not the same signification here as in England. *Held* on appeal by PRACOOK, C. J.—The gift was not governed by the strict principles of English law, but by the Hindu law. By English law there was a valid *donatio mortis causa*; assuming it to be a gift *inter vivos*, it was a valid gift by Hindu law, and the principal and interest secured by the Government papers, and not the mere paper, passed to the donee. By MACPHERSON, J.—The circumstances amounted to a gift by a nuncupative will made in contemplation of death. *UPENDRA KRISHNA DEB v. NABIN KRISHNA BOSE*

[3 B. L. R., O. C., 118]

S. C. KRISHNA DEB v. WOOPENDRA KRISHNA DEB 12 W. R., O. C., 4

15. ———— *Giving with intention to pass property.*—The Hindu law makes no distinction in favour of gifts in contemplation of death, as respects the legal requisites to constitute a perfect disposition by gift. Those requisites are, a giving, either orally or by writing, with the intention to pass the property in the thing given, accompanied by its actual delivery and acceptance in the donor's lifetime. When all these requisites have been fulfilled there is nothing in Hindu law to prevent effect being given to a gift in contemplation of death. The theory of the *donatio mortis causa* considered. *VISALATOEMI AMMAL v. SUBBU PILLAI* [6 Mad., 270]

16. ———— *Deed of gift made on death-bed.*—*Proof of such deed.*—In establishing the validity of a deed of gift taken from a woman stricken with a mortal disease, and in expectation of death, proof at least of equal strictness, as is required to prove a testamentary disposition, must be given, and the proof to support such a transaction ought to be sufficient to establish that she knew what she was

HINDU LAW—GIFT—continued.**2. GIFTS MORTIS CAUSA—continued.****Deed of gift made on death-bed—continued.**

about, and intended to make such disposition of her property. *THAKOOR DAYHEE v. RAI BALAOK RAM* [10 W. R., P. C., 3
11 Moore's I. A., 139]

3. POWER TO MAKE AND ACCEPT GIFTS.

17. ———— *Self-acquired immoveable property.*—*Benares law.*—*Gift to one child to exclusion of others.*—Under the Benares law a man's immoveable property though self-acquired is not within his power of disposal so absolutely by gift in his lifetime as to enable him to give it all to one son or grandson to the exclusion of the rest. *MAHASOOKH v. BUDHEE* . 1 N. W., Ed. 1873, 153

18. ———— *Gift of portion of zemindari after marriage to daughter.*—A deed of gift of land forming part of a zemindari, executed by the zemindar in favour of his daughter five years subsequent to her marriage, is not valid. *SIVANABANJA PERUMAL SETHURAYAR v. MUTTU RAMALINGA SETHURAYAR. ATTULAKSEMI AMMAL v. SIVANABANJA PERUMAL SETHURAYAR* . . 3 Mad., 75

19. ———— *Gift of separate property to Hindu widow.*—*Interest of Hindu widow.*—*Power of alienation.*—*Gift to agent as reward.*—*Want of consideration.*—C., a Hindu, subject to the Mitakshara law, died leaving a widow R. but no issue. In his lifetime he had transferred to R. by gift mouzah R., a portion of his real estate. After his death J. and P., his brothers, sued R. for possession of mouzah R. as being ancestral property. Their suit was dismissed, the Sudder Court finding it to be separate property. That Court found that R. had acquired mouzah R. from C. by gift, and that R. only took under this gift a life-interest in it. J. and P. having died R. made a gift of mauza R. to her agent as a reward for his faithful services. In a suit by N., son of J., as the heir of his uncle C., to set aside this gift to the agent as illegal,—*Held*, on the finding that R. had acquired the property from her husband by gift, that she did not take an absolute interest in the property under the gift, and her husband's heirs could question the validity of the gift to the agent. *Held* also, that the gift to the agent being made only out of motives of generosity was invalid. *RUDE NARAIN SINGH v. RUP KVAR* . I. L. R., 1 All., 734

20. ———— *Gift by married woman to kinsman.*—*Gift of immoveable property by woman without consent of her husband.* Plaintiff sued to enforce a gift to him of immoveable property by a woman living under his guardianship as against her husband. *Held* that such taking of the woman's property by her kinsman is wholly repugnant to Hindu law. *Quære*,—Can a woman, without the consent of her husband, during coverture, absolutely alienate her own landed property? *DANTULURI RAYAPPARAZ v. MALAPUDI RAYUDU* . 2 Mad., 360

21. ———— *Gift among Parsis.*—*Gift to married woman.*—Among Parsis a gift may be made

HINDU LAW—GIFT—continued.**3. POWER TO MAKE AND ACCEPT GIFTS—continued.****Gift among Parsis—continued.**

to the separate use of a married woman, or of a woman about to be married. *MERBAI v. PEROZBAI*

[I. L. R., 5 Bom., 268]

22. ——— Leper, Gift by.—By Hindu law a person becoming a leper is not incapable of making a gift of property to which he had previously succeeded. *SAMACHURN AUDICARNE BYRAGE v. ROOP DASS BYRAGE* . . . 6 W. R., 68

23. ——— Gift to one son to exclusion of others.—Mitakshara law.—Self-acquired immoveable property.—A Hindu son, subject to the Mitakshara law of inheritance, sued to obtain a declaratory decree for a moiety of a house which the father had conveyed by deed of gift to plaintiff's brother, being the self-acquired immoveable property of his father, on the ground that under the Hindu law a father is not permitted to make a gift of immoveable property to one son to the injury of the other. *Held* (reviewing all the authorities and precedents on the subject) that although prohibition of such a gift, on moral or spiritual grounds, may be implied by the texts of Hindu law, yet, where it is not declared that there is absolutely no power to do such acts, those acts, if done, are not necessarily void, and that therefore an exclusive gift to one son by the father of self-acquired immoveable property is not illegal. *SITAL v. MADHO* . I. L. R., 1 All., 394

24. ——— Gift by co-sharers without consent of others.—*Held* that on the Bombay side of India, a member of an undivided Hindu family cannot, without the consent of his coparceners, make a gift of his share in the undivided property, or dispose of it by will. *GANGURAI KOM SIDHAPPA v. RAMANNA BIN BEHMANNA*

[3 Bom., A. C., 66]

VRANDAVANDAS RAMDAS v. YAMUNABAI

[12 Bom., 229]

25. ——— Gift of undivided share by a coparcener.—Voluntary alienation.—Alienation to strangers and relatives.—The rule of Hindu law which forbids voluntary alienations of the family estate by a Hindu coparcener applies as well to gifts to relatives as to gifts to strangers. *PONNUSAMI v. THATHA* . . . I. L. R., 9 Mad., 273

26. ——— Gift to concubine.—Validity of gift.—*G.*, a member of an undivided Hindu family, died leaving him surviving two nephews, *V. A.* and *V. R.*, and *Y.*, a concubine of *G.* *V. A.* lived with *G.* at the time of his death, and had the whole of *G.'s* property, moveable and immoveable, left in his (*V. A.'s*) possession. *V. A.*, before his death, made a gift of the said property to *Y.* in consideration of her having been *G.'s* concubine for many years. In a suit brought by *V. R.* to recover the whole property from *Y.*, she claimed it by virtue of the gift to her by *V. A.*—*Held* that the gift was invalid as against *V. R.*, who was entitled to the whole property, subject to the maintenance of *Y.* as

HINDU LAW—GIFT—continued.**3. POWER TO MAKE AND ACCEPT GIFTS—continued.****Gift to concubine—continued.**

a concubine of *G.* for many years; the High Court also directed the said maintenance to be secured for her (*Y.*) by investment of a sufficient part of the property in trust for that purpose. *VRANDAVANDAS RAMDAS v. YAMUNABAI* . . . 12 Bom., 229

27. ——— Gift to idiot.—Validity of gift.—There is no prohibition in the Hindu law against a gift to an idiot. Although an idiot child cannot take by right of inheritance, a gift by a parent to an idiot child to operate after the parent's death is valid. *KOOLDEBNARAIN SHAH v. WOOMA COOMARIE* . . . Marsh., 357; 2 Hay, 370

4. CONSTRUCTION OF GIFTS BY WILL OR DEED.**28. ——— Mode of construction.—**

Deed of gift.—A deed of gift should be interpreted by itself according to the whole of its context, to the expressions it contains, and to the intention of the party making it. Any other direct evidence to explain the surmised or alleged intention of the donor is inadmissible. *COLLECTOR OF MOORSHEDABAD v. ANUND NATH ROY. KISHENMONTEE DABEE v. ANUND NATH ROY* . . . W. R., F. B., 112

29. ——— Limitation of gift.—Words "angoja santan."—The words "angoja santan" occurring in a deed of gift would limit the gift to the male issue of the donee. *BUGOLA MOYEE v. BHOWANI CHURN PAUL* . . . 5 W. R., 119

30. ——— Qualifying words.—Intention

to give whole property.—Where, from the whole tenor of a deed of gift, it appeared that the real intention of the donor was to pass all her property, qualifying words used in the deed were held not to control its operation. *KALEN DASS ROY v. KHEIRODA SOONDUREE DEBIA* . . . 16 W. R., 300

31. ——— Deed professing to be a will.—Deed of absolute gift.—A deed professing to be a will, but making a gift of property during the testator's lifetime,—*Held* to be a deed of absolute gift. *HURBO SOONDUREE DOSSEE v. CHUNDER MOHINEE DOSSEE* . . . 3 W. R., 200

32. ——— Construction of will making

gift.—Absolute gift.—Where it was plain, as far as the words of a will went, that the testator (a Hindu) intended to make an absolute gift of his property in favour of his widow and daughter, saying that after his death they should be proprietors, and his entire estate should devolve upon them, the Court held itself bound, with reference to the rulings of the Privy Council, to regard the gift as an absolute gift, unless it could be shown (and this was not done) that by the Hindu law a gift to a female meant a limited gift, or carried with it the effect of creating an estate exactly similar to the "widow's estate" under the law of inheritance. *KOLLANY KOBE v. LUCHMEE PERSHAD* . . . 24 W. R., 395

HINDU LAW—GIFT—continued.**4. CONSTRUCTION OF GIFTS BY WILL OR DEED—continued.****33. — Nature of gift to widow.—**

Construction of will.—*Held*, on the construction of a will, that the testator did not give his widow a full proprietary right which she could transmit to her daughter, so as to entitle the latter's husband to succeed to the estate on her dying childless. **PERTAB SINGH v. KHOOSIAL SINGH** . . . 2 **Agra, 90**

34. — Absolute gift.—

A., a Hindu, executed a dan-patro (deed of gift) of a talook in favour of his youngest wife, *B.*, wherein he stated—"You are my youngest wife, and your two sons are minors; therefore, for your charitable expenses (dan o khairath) and for the maintenance of your minor sons, I make a gift of the above talook to you. You from this day becoming possessor thereof, after deduction of the Government revenue, with the balance of the profits, will perform acts of charity (dan o khairath) and maintain the sons. For this purpose I execute this dan-patro." *A.* died leaving *C.*, a son by his first wife, two minor sons by *B.*, and *B.*, his widow. The minor sons of *B.* died unmarried and without issue. *B.* made a gift of the property to *D.*, her daughter's son. In a suit by *C.* against *B.* and *D.* for a declaration of his reversionary right to the property after the death of *B.*,—*Held* that the gift to *B.* under the dan-patro was absolute. **PABITRA DAS v. DAMUDAR JANA**

[7 **B. L. R.**, 697; 24 **W. R.**, 397, note

35. — Alienation, Suit to set aside.—*A.*, a Hindu living under the Mitakshara law, executed a petition to the Collector, stating that he was in possession of all his ancestral property; that his only son was dead; that he had no wife; that his son had left a widow, *B.*, and two daughters, and no other children or heirs; the petitioner went on to state, "I declare her (*B.*) my heir; and as, with the exception of the said *B.*, I have no other heir or malik, nor can there be any, of which circumstances I have already preferred information in my petition of 16th April 1880, and life is uncertain, I consequently request that the name of *B.*, the widow of my late son, be registered in the Collectorate mutation book as proprietor and malguzar in the place of my name with regard to the property," &c. "Further, as of *B.* there are two daughters, who, after marriage, by the blessings of Providence, may be blessed with children, they and their children, therefore, are and will be heirs and maliks. But as long as I live I shall keep the management of my own affairs in my own hands, and look after all the transactions of *dikhat*, &c., myself, as heretofore." *B.* sold and conveyed parcels of the property. In a suit by her daughter's son against the purchasers for a declaration of his reversionary right to the property sold,—*Held* that, under the terms of the petition, there was an absolute gift to *B.*; and that as the gift was not fettered by any restrictions, the alienation by *B.* was good and valid. **CHATTAR LAL SINGH v. SHEWUKRAM** . . . 5 **B. L. R.**, 123; 13 **W. R.**, 285

A contrary construction was put on this document in the case of *Mahomed Shamsool Hoda v. Shewak-*

HINDU LAW—GIFT—continued.**4. CONSTRUCTION OF GIFTS BY WILL OR DEED—continued.****Nature of gift to widow—continued.**

ram (7 **B. L. R.**, 700, note: 14 **W. R.**, 315), which was a suit by a grandson of the testator against a purchaser from the widow to set aside the alienation; and the Court held that the widow only took an estate for life, and after her the daughters took absolutely as joint owners. **COUGH, C. J.**, and **MITTER, J.** (**HAY-LWY, J.**, dissenting); and this decision was affirmed by the Privy Council. **MAHOMED SHAMSPOOL HODA v. SHEWAKRAM**

[14 **B. L. R.**, 226; 1 **L. R.**, 2 **I. A.**, 7
22 **W. R.**, 409

36. — Succession.—A.

a Hindu, executed a deed of gift of certain villages in favour of his wife in the following terms:—"The undermentioned villages have been granted as a gift to the Maharani for her necessary doohri expenses." The wife died a childless widow. *Held* that the gift from her husband was for life only, and that the villages in question were not liable, in the hands of her husband's heirs, to her debts. *Held* also the husband's heir was entitled to her moveable property as her heir, and that such property was in his hands chargeable with her debts. **SHEOTUHL RAM v. RAM NARAIN SINGH** . . . 5 **C. L. R.**, 291

37. — Gift to daughter's sons,

grandsons, &c.—Claim of daughter's daughter.—*Construction of deed of gift.*—A Hindu directed his wife to settle certain property after his decease upon their daughter. She did so by deed of gift (hibbanama), giving it to their daughter, "to be enjoyed by her, her sons, and grandsons, &c., one after another; the other heirs not to have any concern with it." *Held* that the plaintiff as the daughter's daughter had no right to share therein with her brothers, the daughter's sons. **SREENATH GANGOPADHYA v. SARBAMANGALA DEBI**

[2 **B. L. R.**, **A. C.**, 144; 10 **W. R.**, 488

38. — Gift to daughter with remainder to grandsons.—

Right to meane profits uncollected in lifetime of daughter.—Meane profits.—A Hindu by a deed dated in 1840 gave his daughter, a childless widow, an estate for life in certain property, with remainder on her death to his brother's grandsons. The daughter was put in possession, was dispossessed in 1858, and died in 1862. Under the terms of the deed, the property then went to the survivor of the two grandsons, who in 1864 sold his rights and interests in the property. In 1865 the purchaser brought a suit, and recovered possession from the defendants. His representatives now sued for meane profits of the property from 1860 to 1865. *Held* that the plaintiffs were not entitled to meane profits which had accrued due but were uncollected in the lifetime of her daughter; that such meane profits would go to her heirs, who would alone be entitled to them. **GURU PRASAD ROY v. NAFAR DAS ROY** 3 **B. L. R.**, **A. C.**, 121

39. — Gift on contingency.—Lapse

of gift.—By an ikrar executed by *A.*, a Hindu widow,

HINDU LAW—GIFT—continued.**4. CONSTRUCTION OF GIFTS BY WILL OR DEED—continued.****Gift on contingency—continued.**

in favour of *B.*, a son of another wife of her deceased husband, after reciting that her husband had given her a talook as stridhun, but that he had not empowered her to adopt a son, it was thus directed: "You are the son of my co-wife; you are still living; the funeral cake will be preserved to us by you; and on my death the talook is your rightful property. After my death, out of the whole profits for my two daughters, separating by demarcation ryots with jummas to the extent of Rs200, whatever shall remain you shall gain." *Held* that the vesting of the gift was contingent upon *B.* surviving *A.*; and that upon the death of *B.* during the lifetime of *A.*, the gift lapsed. *KISHTO SOONDERY DEBEA v. KISHTOMOTEN* [Marsh., 367: 2 Hay, 405]

40. ——— Gift in ikrarnamah.—Succession as heiress.—Survivorship.—An ikrarnamah, to which *I. K.* and *T. K.* were parties, contained the following stipulation: "After death of me, *I. K.*, my deceased son's widow, *D. K.*, will be the heiress; and after the death of me, *T. K.*, my estate shall devolve on Mussumuts *R. K.* and *D. K.* in equal moieties; should both *R. K.* and *D. K.* die, then their share shall be enjoyed and appropriated by the surviving ladies, but none of them shall ever be able to make gift or alienation to anybody. After the demise of us five ladies, Mussumut *N.*, daughter of my deceased son, *P. B.*, and *N. K.*, daughter of *I. K.*, shall be heiresses and proprietors in equal shares." *Held* that, according to the true construction of the ikrarnamah, *N. K.* was not entitled to succeed as heiress until after the death of all the ladies, and therefore that her son could not, after her death, claim through her while *R. K.* was alive. *JOYPROKASH BHUGUT v. BHUGWAN DASS*. Marsh., 539

41. ——— Gift of land as "kasi or badi".—Reversion of gift to grantor.—Canarese Mapilla Marriage.—Upon the marriage of his daughter, a Canarese Mapilla executed to the husband a deed of gift of certain land to be enjoyed, but not alienated, by the wife and her issue from generation to generation. It was recited in the deed that the gift was made as "kasi or badi." The former term implies that the property reverts to the grantor on the dissolution of the marriage; the latter means a gift to a bride by her relations. The wife died in 1877, leaving a daughter who also died before suit. The grantor sued the husband to recover the land, on the ground that it reverted to him on the death of his daughter in 1877. *Held* that, upon the true construction of the deed of gift, the grantor could not recover. *ISMAIL BEARI v. ABDUL KADER BEARI*. I. L. R., 6 Mad., 319

42. ——— Gift charging profits of estate.—Corrody.—Settlement.—In 1845 a Hindu executed a document called a sanad attested by witnesses, whereby he agreed to pay to his sister, and after her death to her daughter, Rs10 per annum, from the produce of an estate inherited by him from his maternal grandmother. *Held* that a corrody or

HINDU LAW—GIFT—continued.**4. CONSTRUCTION OF GIFTS BY WILL OR DEED—continued.****Gift charging profits of estate—continued.**

charge on the profits of the estate was created, which bound the estate in the hands of the widow of the grantor. *CHATTI CHALAMANNA v. PANDRANGI SUBBAMMA*. I. L. R., 7 Mad., 28

43. ——— Gift, conditional on liability for maintenance.—Liability of son for maintenance of family.—Where a father executed a deed of gift in favour of his son with the condition that the son should take the property subject to the same liability in respect of the maintenance of the family as it was subject to in the hands of the father, *Held* that this was not an obligation entered into by father or son as a matter of contract, but a reservation in the father's gift which did not give the son a greater right to be maintained at the expense of the father, or in the family-house, than he had before. *HURENHUR MOOKERJEE v. RAJ KISHEN MOOKERJEE*. 23 W. R., 236

44. ——— Gift to Brahmans.—Restriction against alienation.—Rule of perpetuities.—According to Hindu law a restriction against alienation in a gift of land to Brahmans is inoperative as being a condition repugnant to the nature of the grant. Where a grantor creates a secular estate with a religious motive, the grant does not stand on the same footing with a religious endowment, and is not exempt from the rule as to perpetuities. *ANANTHA TIETHA CHARIAR v. NAGAMUTHU AMBALAGAREN* [I. L. R., 4 Mad., 200]

45. ——— Construction of gift as to quantity of estate given.—The rule as to the construction of the language in which a gift is made, independently of the "Transfer of Property Act," Act IV of 1882 (which may, or may not, have been expressed so as to lay down, in favour of absolute gifts, a rule more positive), is that indefinite words of gift are calculated to convey all the interest of the grantor, it being also necessary to read the whole of an instrument in order to gather the intention. A gift being thus expressed,—"I put a stop to my interest in those taluqs, and withdraw my enjoyment thereof, and I make them over to you;" *Held* that this must be read with what preceded it, viz., "in order that you may perform those religious ceremonies, celebrate the festivals satisfactorily, and may provide for your own support, by having the property under your authority and control;" and that the words of gift must be taken to be limited by the purpose of the gift; the whole taken together showing that the donor's intention was that the donee should take the property for life only. *KALIDAS MULLICK v. KANHAYA LAL PUNDIT*

[I. L. R., 11 Calc., 121
I. R., 11 I. A., 218]

46. ——— Gift to designated person.—Construction of will.—Persona designata.—*G.*, a childless Hindu, by his will directed as follows: "And as I am desirous of adopting a son, I declare that I have adopted *K.*, third son of my eldest brother.

HINDU LAW—GIFT—continued.**4. CONSTRUCTION OF GIFTS BY WILL OR DEED—continued.****Gift to designated person—continued.**

My wives shall perform the ceremonies according to the shastras, and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property, moveable and immoveable, in my own name or benami left by me, also that adopted son: when he comes to maturity the executors shall make over everything to him to his satisfaction. . . . God forbid, but should this adopted son die, and my younger brother N. have more than one son, then my wives shall adopt a son of his. If at that time N. has not a son eligible for adoption, they shall adopt another son of S., and the wives and executors shall perform all the aforementioned acts." In a suit by one of G.'s widows as heir of her husband to set aside his will, and recover half his property, it appeared that the abovementioned ceremonies had been performed by one widow only. Held that according to the true construction of the will (which was established by the evidence) there was a gift of his property by the testator to a designated person independently of the performance of the ceremonies. *NIDHOOMONI DEBYA v. SARODA PERSHAD MOOKERJEE*

[I. L. R., 3 I. A., 253: 26 W. R., 91]

47. ——— Gift to "adopted son."—Invalid adoption.—Motive for gift.—Persona designata.—Held, upon the true construction of an angikarpatra, whereby an estate was given to the donee in virtue of his being "adopted son" of the donor, that the gift did not take effect, inasmuch as the adoption was invalid. The distinction between what is description only, and what is the reason or motive for a gift or bequest, may often be fine; but it must be drawn from a consideration of the language and the surrounding circumstances. *Nidhoomoni Debya v. Saroda Pershad Mookerjee*, I. L. R., 3 I. A., 253, distinguished. *FANINDRA DEB RAIKAT v. RAJESWAR DAS*

[I. L. R., 11 Cal., 463: I. L. R., 12 I. A., 72]

48. ——— Transfer of shares in joint family estate by the head of the family and his sons to minor grandson.—Partial failure of gift, Effect of.—In a joint family, under the Mitakshara, consisting of a grandfather, his son, and that son's son, in pursuance of a family arrangement, the first, with the consent of the second, made by deed a gift of the whole of the ancestral estate to the third, including with him possible brothers that might be born thereafter. The father, in lieu of his share in the ancestral estate, received money for the payment of debts incurred by him. Possession was given to the minor, through his mother, appointed by the deed of gift to be his guardian. The minor then died, and the mother retained possession. The family estate on the death of the grandfather was attached by one of the father's creditors who held a decree against him; and in a suit to avoid the deed of gift it was held that the transfer to the minor having been made in good faith and for good consideration was valid: and that though the gift to possible brothers could not

HINDU LAW—GIFT—continued.**4. CONSTRUCTION OF GIFTS BY WILL OR DEED—continued.****Gift to "adopted son"—continued.**

take effect, the gift by the head of the family with the consent of the son to the next generation of which the only existing member, viz., the minor grandson, was put into possession, was valid. It was not a partition, for (according to the Mitakshara, chapter I, section 5, verse 31) there could be no partition directly between grandfather and grandson while the father was alive. But it was a family arrangement partaking so far of the nature of a partition that the father received a portion and was thenceforth totally excluded; and *quoad ultra*, the grandfather surrendered his interest to the grandson. *RAI BISHENCHAND v. ASMAIDA KOER*

[I. L. R., 6 All., 560: I. L. R., 11 I. A., 164]

49. ——— Gift to a class.—Construction of family settlement.—Rule for gift to unborn grandsons.—Partial failure of gift, Effect of.—Where the intention of a donor is to give a gift to two named persons capable of taking that gift, although it is also his intention that other persons unborn at the date of the gift should afterwards come in and share therein, the part of the gift which is capable of taking effect should be given effect to, notwithstanding that the intention of the donor cannot be carried out in its entirety. Principle in *Rai Bishen Chand v. Asmaida Koer*, I. L. R., 11 I. A., 164: I. L. R., 6 All., 560, followed. *Semble*.—As a general rule, where there is a gift to a class, some of whom are, or may be, incapacitated from taking, because not born at the date of the gift or the death of the testator, as the case may be, and where there is no other objection to the gift, it should enure for the benefit of those members of the class who are capable of taking. *Soudamoney Dassie v. Jogesh Chandra Dutt*, I. L. R., 2 Cal., 262, and *Kherode-money Dassie v. Doorgamoney Dassie*, I. L. R., 4 Cal., 455, questioned. *RAM LAL SETT v. KANAI LAL SETT* . . . I. L. R., 12 Cal., 663

50. ——— Conveyance by a Hindu without male issue.—Adoption pendente lite.—Adoption from improper motive.—Will.—A conveyance by a Hindu, without male issue at the date thereof, will bind his subsequently born or adopted male issue. Such issue at birth takes a vested interest in such property only as is that of their father at that time. *C.*, a Hindu Brahmin without male issue, executed on the 10th September 1856 a bakshish-patra (a deed of gift) to *M.* containing words to the following effect: "I have given to you as gift and charity my property at —, together with my moveable property. [Here follow the particulars of the property.] The garden and house, &c., &c., I have given to you as gift this day of my own accord, and I have made the same over to you. You shall pay the Government assessment and village expenses, and you and your grandsons should enjoy the same property generation after generation and live in peace there. As long as I live I will take the profits, and you should maintain me as if I were one of the members of your family . . . I have no ownership whatever in the property; the ownership be-

HINDU LAW—GIFT—continued.**4. CONSTRUCTION OF GIFT BY WILL OR DEED—continued.****Conveyance by a Hindu without male issue—continued.**

longs to you from this day. This day I owe no money to anybody. Whatever property there may be after my death, other than that described above, is all given to you. No person has any claim thereto; the entire ownership belongs to you. I have given in writing this deed in sound mind and of my own accord." The document was registered on the 4th October 1856. *M.* was put in possession of the property, and managed it for some time. He paid the Government assessment and held receipts for the same. On the 6th January 1858, *C.* addressed a letter to the Assistant Magistrate of the place, purporting to revoke the *bakshishpatra*, and he (*C.*) was restored to possession by that officer. In 1859, *M.* brought a suit (No. 446 of 1859) against *C.* for the property. Before any decree was passed in it, *C.*, on the 6th June 1859, adopted the plaintiff, who was then eight years of age. The plaintiff was not made a party to that suit. On the 2nd April 1860 the Munsif made a decree in favour of *M.*, holding that *C.* had executed the *bakshishpatra* and given possession of the property to *M.* under it. He directed the property to be restored to the possession of *M.* to be held according to the terms of the *bakshishpatra*. *C.* appealed, but subsequently withdrew his appeal, admitting the execution of the *bakshishpatra* and agreeing to give over the property to *M.* according to the terms of the Munsif's decree. *M.* accordingly obtained possession of the property. On the 16th March 1874, the plaintiff brought the present suit against the grandson of *M.* (*M.* then being dead) for a moiety of the property, on the ground that *C.*, his adoptive father, could not alienate more than one half of the property. Both the lower Courts allowed the plaintiff's claim,—the Court of first instance being of opinion that the document was a gift, and did not bind the plaintiff, and the Appellate Court holding that it was not a gift but a will, and that it had been revoked by the testator before his death. On appeal to the High Court,—*Held* that the document was a conveyance and not a will, and that it vested the property in *M.*, the donee, subject to a trust regarding any surplus that remained of the income after payment of the Government assessment and village expenses in favour of *C.* as long as he lived, and that the donor could not revoke it, inasmuch as the document contained no power of revocation. *Held* also that, inasmuch as the plaintiff had been adopted before the hearing and decree in suit 446 of 1859, and might have been made a party to it, but was not, he could not be bound by proceedings in that suit, and that he was, therefore, at liberty to reopen the question whether the *bakshishpatra* was intended by *C.*, when executing it, to operate as a deed or as a will. An adoption *pendente lite* is not to be regarded in the same light as an alienation *pendente lite*. If a legitimate son has been born to *C.* during the suit, such son, to be bound by a pending suit affecting his father's ancestral property, must have been made a party, and a son adopted during the suit is in the same position. The one at his birth and the other at his adoption would

HINDU LAW—GIFT—continued.**4. CONSTRUCTION OF GIFT BY WILL OR DEED—continued.****Conveyance by a Hindu without male issue—continued.**

take a vested interest in his father's property according to the Hindu law in the Presidency of Bombay. The circumstances that *C.* might have adopted the plaintiff for the purpose of endeavouring to defeat the *bakshishpatra*, did not alter the case. As a sonless Hindu he had a right to adopt a son, and he was not under any obligation to *M.* not to adopt; and, even if he had so contracted, *quære*,—whether such a contract would affect the validity of the adoption. **RAMBHAT v. LAKSHMAN CHINTAMAN**

[*L. R.*, 5 Bom., 630]**5. REVOCATION OF GIFTS.**

51. ——— Gift made under mistake of law.—Right to revoke gift.—By Hindu law a man may make a gift of any of his property binding as against himself. Even when a deed of gift is voidable, on the ground of fraud, accident, or mistake, it is a question for the discretion of the Court whether cancellation or delivery up ought to be ordered. Where a Hindu made a gift to a person whom he said he had taken as his *manasaputra*,—*Held* that he could not set it aside, on the ground that he erred in supposing that the donee could perform his funeral rites. **ABHACHARI v. RAMA CHANDRAYYA**. 1 Mad., 303

52. ——— Gift on condition.—Revocation of gift on failure of condition, Power of.—Under Hindu law if a person make a gift to another in expectation that the donee will do some work in consideration of the gift, it follows that if the donee fail to do that which it has conditioned he should do, the gift is revocable. **MAHADHO PUNDIT CHETDEN v. BADAMO**. 5 N. W., 5

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1. ——— Age of discretion.—Father's right to custody of child.—The legal age of discretion of Hindus in India is uniformly sixteen years. Up to that age the father has an undoubted right to the custody of his male children. **RE HEMNAUTH ROSE**. 1 Hyde, 111

2. ——— Guardian of adopted son.—Act XX of 1864.—Natural and adoptive parents.—The natural father of a minor who has been adopted into another family is not by Hindu law his proper guardian when either of the adoptive parents is living and willing to act as guardian. The residence of the minor with the adoptive parents is a part of the consideration for their adoption of a son, and, unless serious ill-treatment or incompetency on their part be proved, they and the survivor of them are the proper

HINDU LAW—GUARDIAN—continued.**1. RIGHT OF GUARDIANSHIP—continued.****Guardian of adopted son—continued.**

guardians. *LAKSHMIBAI v. SHRIDHAR VASUDEH TATLE* **1 I. L. R., 3 Bom., 1**

3. ——— Guardian of daughter.—

Koolin Brahmin.—A Koolin Brahmin is not so much the natural guardian of his daughter as her mother. *MODHOOSOODUN MOOKERJEE v. JADAB CHUNDER BANERJEE* **3 W. R., 194**

4. ——— Mother.—Mithila law.—Minor.

Certificates of guardianship.—Under Mithila law, the mother of a minor is entitled to a certificate of guardianship in preference to the father. *JUSODA KOER v. LALLA NETTYA LALL*

[**1 I. L. R., 5 Cal., 43**

5. ——— Paternal grandmother.—

Stepmother.—Held that the paternal grandmother has the right to the guardianship of a Hindu minor, in preference to the stepmother. Held, also, in the present case, that the paternal grandmother, with the assent of the nearest male relative, had, in preference to the stepmother, power to dispose of the minor in marriage. *RAM BUNSEE KOOMAREE v. SOOBK KOOMAREE* **2 Ind. Jur., N.S., 193**
[**7 W. R., 321**

6. ——— Mother-in-law.—Deceased son's

widow.—A Hindu widow is the proper guardian of her deceased son's widow in the absence of any person claiming a preferential title to succeed to the estate of the latter. *BAI KESAR v. BAI GANGA*

[**8 Bom., A. C., 31**

7. ——— Husband and wife.—Infant

wife.—Marriage.—According to Hindu law, after marriage, a husband is the legal guardian of his wife's person and property whether she is a major or minor. The marriage of an infant being under the Hindu law a legal and complete marriage, the husband has the same right as in other cases to demand that his wife shall reside in the same house as himself, except under special circumstances such as absolve the wife from the duty. *KATEERAM DO-KANEE v. GENDRENEE* **23 W. R., 178**

8. ——— Mother.—Power of father to

appoint another person.—The Hindu law does not prohibit a father from appointing, by writing or by word, any other person than the mother to be the guardian of his minor children. *SOOBAB PRETHEE LAL JHA v. SOOBAB DOORGA LAL JHA. SOOBAB DOORGAH LAL JHA v. NEELANUND SINGH*

[**7 W. R., 73**

9. ——— Right of relatives (after parents

are dead) to custody of child.—Nearest paternal relatives.—Selection of guardian by Court.—The claims of relatives to the guardianship of a minor stand upon quite a different footing from those of parents. The nearest paternal relatives have no legal right to the immediate custody of a child on the death of its parents. In the absence of father or mother or guardian appointed by the father, the selection of a guardian for a Hindu minor is to be

HINDU LAW—GUARDIAN—continued.**1. RIGHT OF GUARDIANSHIP—continued.****Right of relatives (after parents are dead) to custody of child—continued.**

made by the Court, as it represents the ruling power. *KISTO KISSOR NROGHY v. KADER MOYH DASSEE*
[**2 C. L. R., 533**

10. ——— Proximity of connection.—

Outcast.—Proximity of connection does not necessarily entitle a person to the office of guardian. A person out of caste is not a proper person to be the guardian of Hindu minors. *FUGGOO DAYE v. RANAH DAYE* **4 W. R., Mis., 8**

11. ——— Loss of caste.—Act XXI of

1850.—Suit to obtain custody of minor from father who intends to marry her to an impotent man.—A Hindu who has been deprived of caste by the members of his brotherhood on account of intending, for a money consideration, to give his infant daughter in marriage to a man both old and impotent, does not, under Hindu law, thereby forfeit his right as guardian to the custody of such daughter. Even if there were a rule of Hindu law which in such a case inflicted a forfeiture of such right, such rule could not, with reference to the provisions of Act XXI of 1850, be enforced. Where, accordingly, because a Hindu had been deprived of caste for the reason above mentioned, a person sued to have the custody of the infant himself as her guardian in lieu of her father, and as such to be declared empowered to arrange for her marriage to a suitable husband, basing his suit on Hindu law,—Held that such suit was not maintainable. *KANAKI RAM v. BIDDYA RAM*

[**1 I. L. R., 1 All., 549**

12. ——— Father converted to Chris-

tianity.—A father is not precluded from being custodian of his children by the fact that he has become a convert to Christianity. *MUCHOO v. AR-ZOON SAHOO* **5 W. R., 235**

13. ——— Immorality of father.—

Keeping concubine.—A Hindu goldsmith kept a concubine and had a family by her, and then married and had legitimate issue, but continued to keep the concubine in his house. Held that this circumstance alone did not justify a Court in refusing him the custody of his legitimate children. *JUMMALAPUDI KALIDAS v. ATTALURI SUBBAMMA*

[**1 I. L. R., 7 Mad., 29**

2. POWERS OF GUARDIANS.**14. ——— Power of Hindu mother**

acting as manager for minor.—Power of alienation.—Held that a Hindu mother, acting as manager of the estate of a minor, has no more authority to alienate or charge that estate than the managing member of an undivided Hindu family. *DALPAT SINGH v. NANABHAI*

[**2 Bom., 333; 2nd Ed., 306**

15. ——— Contract made without

authority.—Necessity for sale.—Under the Hindu law a contract made by a guardian without authority cannot bind the minor. Even if it is desirable that

HINDU LAW—GUARDIAN—continued.**2. POWERS OF GUARDIANS—continued.****Contract made without authority—continued.**

a minor should have any benefit, such as increase to a very small income, from some undertaking or enterprise, e.g., obtaining a lease of certain rents, that circumstance is not sufficient to constitute a necessity for the mother and guardian to mortgage the minor's ancestral property with a view to secure such benefit. *RADHA PERSHAD SINGH v. TALOOK RAJ KOOR* 20 W. R., 38

16. ——— Power to deal with estate of minor.—*Minor.*—*Act XL of 1858.*—*Mother.*—The mother and guardian of a Hindu minor, though not a guardian appointed under Act XL of 1858, when acting *bona fide* and under the pressure of necessity, may sell his real estate to pay ancestral debts and to provide for the maintenance of the minor. *SOONDER NARAIN v. BENNUD RAM* . I. L. R., 4 Calc., 76

17. ——— Minor.—*Mother.*—*Act XL of 1858.*—The mother and guardian of a Hindu minor, although a certificate of guardianship has not been granted to her under Act XL of 1858, may deal with the estate of the minor within the limits allowed by the Hindu law. *ROSHAN SINGH v. HARKISHAN SINGH* . I. L. R., 3 All., 535

See *ABHASSI BEGUM v. RAJROOP KONWAR*
[I. L. R., 4 Calc., 33; 2 C. L. R., 249]

18. ——— Compromise made by a father as guardian of his natural son.—*Suit by son to set aside compromise.*—*Minor adopted by religious celibate.*—C., who was the head of a Lingayat math, died in 1862. The plaintiff, who was then a minor, claimed through his natural father, R., to be C.'s heir. This claim was disputed by V., on behalf of his son, the defendant, who was also a minor. In 1863, pending legal proceedings between them, R. and V. compromised the dispute, and agreed that the math and the property appertaining to it should be divided between the plaintiff and the defendant in equal shares. In the present suit the plaintiff sought to set aside the compromise made on his behalf by his natural father, R., on the ground that R. had no authority to make it, and that there was no necessity for it. Held that the plaintiff's natural father was his proper guardian to assert his rights, as adopted heir, against rival claimants, and that the compromise was binding. *NIRVANAYA v. NIRVANAYA* I. L. R., 9 Bom., 365

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[I. L. R., 1 Mad., 312

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See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF.

[I. L. R., 2 All., 809
I. L. R., 6 All., 322
I. R., 11 I. A., 20

See HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

[1 Ind. Jur., O. S., 59
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3 B. L. R., A. C., 421
5 B. L. R., 382, 468
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I. L. R., 4 Cal., 550
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I. L. R., 2 All., 150

1. AUTHORITIES ON LAW OF INHERITANCE.

1. ———— **Law in Western India.—Comparative authority of Mitakshara and Mayukha in South Mahratta country.**—In Western India, on questions of inheritance, the first place is assigned to the Mitakshara, and only a subordinate, though still an important one, to the Mayukha, on the authority of the responses delivered officially by the shastris of the Courts and oral statements of persons learned in the Hindu law of this Presidency. *Babaji Kashinath v. Anandras Bhaskar*, unreported, commented upon. *KRISHNAJI VYANKTESH v. PANDURANG. PANDURANG v. KRISHNAJI VYANKTESH* . 12 Bom., 65

2. LAW GOVERNING PARTICULAR CASES.

2. ———— **Mitakshara law.—Presumption where that law prevails.**—In the absence of all evidence to the contrary, a Hindu must be considered to be governed by the Mitakshara law where it prevails. *JUGO BUNDHOO TEWARRE v. KURUM SINGH* [22 W. R., 341

3. ———— **Lands transferred to district having different law of succession.—Presumption against change of law.**—When lands situate in one district are arbitrarily transferred by Government to another having a different system of law in

HINDU LAW — INHERITANCE — continued.**2. LAW GOVERNING PARTICULAR CASES—continued.**

Lands transferred to district having different law of succession—continued.

matters of succession, the owners of those lands cannot be presumed to change their observances with their districts; the presumption being against such change. *PIRTHEE SINGH v. COURT OF WARDS* [23 W. R., 272

4. ———— **Local or family custom.**—In a case where the question was as to the right of succession to an estate held by S., the common ancestor of the plaintiff and the defendant, which estate was formerly within zillah Beerbhoom, and subject to the law of the Dayabhaga, but was transferred to zillah Bhagulpore, the High Court refused to go into the question of the transfer, and held the case was to be governed by the Mitakshara law, as being that in force in zillah Bhagulpore. The Privy Council remanded the case for a decision on the effect of the transfer, and as to whether the succession thereby became regulated by the Mitakshara law, or whether, by reason of any local or family custom, it continued to be governed by the Dayabhaga. *SHEO SOONDOOREE v. PIRTHEE SINGH* . 21 W. R., 89
S. C. in High Court, *PIRTHEE SINGH v. SHEO SOONDOOREE* 8 W. R., 261

5. ———— **Law governing case.—Inheritance.—Bengal or Mithila law.**—The question being whether the succession in this case was regulated by the Bengal or Mithila law,—*Held*, in accordance with the Court below, after an examination of the whole evidence, that the Mithila law was applicable. *PADMVATI v. DOOLAR SINGH* [7 W. R., P. C., 41: 4 Moore's I. A., 259

6. ———— **Dayabhaga.—Mitakshara.**—The question being whether the descent in the family in this case was to be regulated by the Dayabhaga or the Mitakshara,—*Held*, upon the evidence, that the Dayabhaga applied to the decision of the cause. *DIBBAH v. KOOND LUTA* [7 W. R., P. C., 44: 4 Moore's I. A., 292

7. ———— **Mithila law.—Preference of paternal to maternal lines.—Migration.**—By the Hindu law in force in Mithila or Tirhoot the right of succession vests in the descendants in the paternal line in preference to those in the maternal line: and such law continues to regulate the succession to property in a family who have migrated from that district but have retained the religious observances and ceremonies of Mithila. A suit having been instituted to recover the estate of a Hindu Mithilese by the maternal first cousin of the last male proprietor who claimed to be entitled according to the law in force in Bengal,—*Held* by the Judicial Committee, affirming the judgment below, that, according to all the authorities, the shastris of Mithila were to govern the succession, and that by them the party in possession, being descended in the sixth degree in the paternal line, was to be preferred to one in the maternal

HINDU LAW — INHERITANCE — continued.**2. LAW GOVERNING PARTICULAR CASES—continued.****Law governing case—continued.**

line; notwithstanding that part of the property was locally situate in Bengal, and that the last proprietor was domiciled there. *RUTOHEPUTTY DUTT JHA v. RAJUNDUR NARAIN RAO*. 2 Moore's L. A., 182

8. — Evidence showing what law governs family.—*Inheritance.*—Proof of the fact that, in matters connected with succession, the law of the country of domicile has been adopted by a family, negatives any presumption arising from the observance of ancient customs in other matters. *CHUNDRO SREEKHUR ROY v. NOBIN SOONDUR ROY*

[2 W. R., 197]

3. SPECIAL LAWS.**(a) COORG.**

9. — Inheritance, Law of.—*Mitakshara law.*—The ex-Rajah of Coorg died in England in 1859, leaving considerable moveable property which he had himself acquired and accumulated, chiefly by means of his pension and some ancestral jewels and ornaments. By his last will and testament he left all his property to trustees in trust to pay thereout certain legacies, and to divide the residue in certain proportions among various members of his family. Some difficulty having arisen after his death regarding the distribution of his estate, the Court of Chancery stated a case and propounded certain questions under 22 and 23 Vict., Cap. 63, for the opinion of Her Majesty's late Supreme Court at Fort William in Bengal, with reference to the Hindu law as administered by that Court, and so far as the same was applicable to the facts set forth in the case stated. The first and chief question propounded was—"What school of Hindu law would govern the succession to the estate of the deceased Rajah, and the rights and interests of the members of his immediate family, with reference to the will and facts stated, and also supposing he had died without having made any testamentary disposition of his property?" In answer to this question the Court held that the doctrines of the Benares school of Hindu law, as laid down in the Mitakshara, should govern the decision of the case regarding the succession to the estate of the deceased Rajah, on the ground that the Mitakshara is the leading authority of Hindu law throughout Southern India, as well as Benares, and that the Court had no reason to suppose that the doctrines of the Mitakshara had been in any way varied or altered by any text-book recognised as an authority in Coorg, although some variations prevail in various parts of Southern India. The Court were further of opinion that the doctrines of the same school of Hindu law would govern the case, supposing the Rajah died without having made any testamentary disposition of his property. The succession to the property of a Hindu is governed by the laws which regulate his religious rites and ceremonies, and not by the domicile of himself or his family. *LOGIN v. PRINCESS VICTORIA GOURAMMA of COORG*. 1 Ind. Jur., O. S., 109

HINDU LAW — INHERITANCE — continued.**3. SPECIAL LAWS—continued.****Inheritance, Law of—continued.****(b) KANARA.**

10. — Inheritance of females.—*Aliya Santana law.*—In Kanara females only are recognised as the proprietors of family property. The Aliya Santana system of inheritance differs only from that of Malabar in more consistently carrying out the doctrine that all rights to property are derived from females. *MUNDA CHETTI v. TIMMAJU HENSU*. 1 Mad., 380

(c) CUTOCHI MEMONS.

11. — Absence of special custom.—In the absence of proof of any special custom of inheritance, the Hindu law of inheritance applies to Cutchi Memons. *ASHABAI v. TYEB HAJI RAHIMTULLA*. I. L. R., 9 Bom., 115

ABDUL CADUR HAJI MAHOMED v. TURNER
[I. L. R., 9 Bom., 153]

See, however, IN RE ISMAEL
[I. L. R., 6 Bom., 452]

12. — Custom. — Joint family.—*Joint and ancestral property.*—Cutchi Memons are governed by the Hindu law of inheritance in the absence of proof of special custom. A custom alleged to exist among Cutchi Memons of recognising no difference between ancestral and self-acquired property, held not proved. Four brothers of the Cutchi Memon community carried on trade with capital inherited from their father. Large profits were made in the course of business. It was alleged that some of the profits were made by means of borrowed capital, and some arose out of a commission business in which the capital of the firm was not used at all; and it was contended that such profits could not be considered as ancestral funds. It appeared, however, that the entire business was carried on by the same firm. There were common books, common expenses, and a common staff. The borrowed money was put into the general cash with the original capital. Held that the whole property was ancestral. Augmentations which blend, as they accrue, with the original estate, partake of the character of that estate. Moreover, the loans in question and the extension of business, to which they led, might have produced heavy losses instead of great profits, and the family property would have been liable to debts so incurred. The family property, being thus subject to liabilities arising from the loans, was entitled to participate in any benefits resulting from them. *MAHOMED SIDDICK v. AHMED. ABDULA HAJI ABDSATAR v. AHMED*. I. L. R., 10 Bom., 1

(d) JAINS.

13. — Widow claiming separate property of husband.—In the absence of evidence to the contrary, the rules of inheritance of the Jains must be taken to be the same as those of the orthodox Hindus in that part of the country in

HINDU LAW — INHERITANCE — continued.**3. SPECIAL LAWS—continued.****(d) JAINS—continued.****Inheritance, Law of—continued.**

which the property is situate. Therefore, where the widow of a Jain claimed as heiress of her husband, who was separate in estate, property situate in a district in which the Mitakshara prevails,—*Held* that she was entitled to succeed. **LALLA MAHABEER PERSHAD v. KUNDUR KOONWAR**

[2 Ind. Jur., N. S., 312: 8 W. R., 116]

14. ——— Custom.—In the absence of proof of special custom varying the ordinary Hindu law of inheritance, that law is to be applied to Jains. **CHOTAY LALL v. CHUNNOO LALL**

[I. L. R., 4 Cal., 744: 3 C. L. R., 465]

BACHEBI v. MAKHAN LALL

[I. L. R., 3 All., 55]

LALLA MOHABEER PERSHAD v. KUNDUR KOONWAR

2 Ind. Jur., N. S., 312: 8 W. R., 116

15. ——— Mitakshara law.—*Absence of special custom.*—They are governed by Mitakshara law in the absence of custom to the contrary. **BACHEBI v. MAKHAN LAL**

I. L. R., 3 All., 55

(e) SADHS.

16. ——— Inheritance, Law of.—*Absence of special custom.*—*Held* that the Hindu law of inheritance was presumably applicable to the parties, and the defendant had not shown that any custom among the Sadhs, having the force of law, prevailed opposed to the Hindu law. **GOPI CHAND v. SUJAN KUAR**

I. L. R., 8 All., 646

(f) SAKULDIPI BRAHMIN.

17. ——— Mitakshara law.—The tribe of Brahmins called Sakuldipti living in various parts of Northern India are governed by the Mitakshara school of Hindu law. **RUDRE PERKASH MISSEER v. HARDAI NARAIN SAHU**

[9 C. L. R., 16]

4. MIGRATING FAMILIES.

18. ——— Hindu family migrating.—*Presumption as to law applicable.*—In a case where a Hindu family migrates from one territory to another, if they preserve their ancient religious ceremonies, they also preserve the law of succession. The presumption is, until the contrary be proved, that the family so migrating have brought with them, and retain, all their religious ceremonies and customs; especially when the family is shown to have brought with it its own priests, who, and their descendants after them, continued their ministrations down to the period of contest. **JUNARUDDEEN MISSEER v. NOBIN CHUNDER PERDHAN**

Marsh., 232: 1 Hay, 534

S. C. OOTUM CHUNDER BHUTTACHARJEE v. OBHOY CHURN MISSEER. NOBIN CHUNDER PERDHAN v. JANARDEUN MISSEER

W. R., F. B., 67

SONATUN MISSEER v. RUTUN MOLLAH

[W. R., 1864, 95]

HINDU LAW — INHERITANCE — continued.**4. MIGRATING FAMILIES—continued.****Hindu family migrating—continued.**

19. ——— Laws of origin and domicile.—Hindu families are ordinarily governed by the law of their origin not by that of their domicile. The presumption is in favour of the law of origin until the adoption of the law of a new domicile is proved. **LUKKEA DEBRA v. GUNGAGOBIND DOBBY**

[W. R., 1864, 56]

PIETHEE SINGH v. SHEO SOONDUREE

[8 W. R., 261]

S. C. in Privy Council, where it was remanded. SHEO SOONDUREE v. PIETHEE SINGH

[21 W. R., 89]

20. ——— Adoption of local custom.—Where a Hindu family came from the Punjab accompanied by their priests at a time when they were not governed by the Bengal law, and it was afterwards alleged that they were now governed by that law, the onus of proving the allegation was held to be with those who made it. The mere adoption of local customs and the observances of occasional local festivals and ceremonies would not prove that the law which originally governed a family had been set aside and another law substituted. **HURO PERSHAD ROY CHOWDHRY v. SHIBO SHUNKURIE CHOWDRAIN**

[13 W. R., 47]

See SURENDRA NATH ROY v. HIRAMANI BUE-MONI

1 B. L. R., P. C., 26

[10 W. R., P. C., 35: 12 Moore's L. A., 81]

21. ——— Presumption of importing its own laws.—*Rebutting presumption.*—The presumption that a Hindu family, immigrating into Bengal from the North-Western Provinces, imports its own customs and law as regulating the succession and the ceremonies of Hindu law in that family, may be rebutted by showing that, except as regards marriage, all other ceremonies are performed according to the law of the Bengal school and by Bengal priests. **RAM BROMO PUNDAH v. KAMINER SOONDEEY DOSSEE**

6 W. R., 295

22. ——— Presumption as to change in law.—When a family originally migrated from the Mithila province to the province of Bengal, the presumption is that they have preserved the religious rights and customs prescribed by the Mitakshara law, unless the contrary be proved. **KOUMUD CHUNDER ROY v. SEETAKANTH ROY**

[W. R., F. B., 75]

23. ——— Migration from N.-W. P. to Bengal.—*Mitakshara and Dayabhaga laws.*—*Held* that, although a family migrating from the North-West Provinces to Bengal would ordinarily remain governed by the Mitakshara law, the Dayabhaga law was, under the circumstances of this case, applicable to a family so migrating. **HEERAMONER BRAHMIN v. NUFFAREE BRAHMINER**

[1 Hay, 292]

HINDU LAW — INHERITANCE — continued.**4. MIGRATING FAMILIES—continued.****Hindu family migrating—continued.**

The Privy Council, however, without deciding which law prevailed, seem to have doubted whether the decision of the High Court was correct on the evidence. **SURENDRANATH ROY v. HIRAMANI BURMONI** 1 B. L. R., P. C., 26
[10 W. R., P. C., 35: 12 Moore's L. A., 51]

5. MODIFICATION OF LAW.

24. ——— Consent.—Modification of operation of law.—The operation of the law of inheritance can be modified by consent of the parties. **MAHREBAN SINGH v. SHRO KOONWAR**

[1 Agra, 106]

25. ——— Waiver of rights acquired by operation of law.—Held that the plaintiffs were competent to waive their right of inheritance, and that on the construction of a wajib-ul-urz it was not designed to give the widow a right of inheritance in the joint estate in preference to that of the brothers of the deceased contrary to Hindu law. **DAL CHUND v. SOONDER**

2 Agra, 173

26. ——— Waiver of rights.—Absence of special custom.—In the absence of any evidence of special custom,—Held that a nephew could not inherit the tenant-right from his uncle, whose legal heirs were his sons, nor could the latter transfer their right of inheritance to their cousin, or confer on him such a right by consenting to his occupation of the land. **OMRAO SINGH v. PERTAB**

[3 Agra, 143]

27. ——— Conditions in wajib-ul-urz altering law of inheritance.—Document intended to record village rights.—Conditions in village administration papers, purporting to interfere with or alter the ordinary rules of descent, will not be enforced. The law of inheritance, whether Hindu or Mahomedan, is a part of the law of this country, and as such overrides the provisions of a document which was not designed to record more than the rights of the village community. Small sections of society cannot be allowed to make special laws of descent for themselves. **SARUFI v. MUKH RAM**

2 N. W., 227

28. ——— Private arrangement.—Alteration of law.—A son by birth or adoption can for adequate reasons be disinherited; but the course of devolution prescribed by the law cannot be altered by a private arrangement; on the disinheritance of the son, the son's son becomes his grandfather's lawful heir. **BALKRISHNA TRIMBAK TENDULKAR v. SAVITRIBAI**

I. L. R., 3 Bom., 54

6. GENERAL RULES AS TO SUCCESSION.

29. ——— Preference of heirs.—Ability to confer spiritual benefits.—Capacity to offer oblations.—The rule of succession as laid down in the Dayabhaga, rests upon the great principle of the entire Hindu law of succession to property, that nearness in regard to the attributed capacity and sacred

HINDU LAW — INHERITANCE — continued.**6. GENERAL RULES AS TO SUCCESSION—continued.****Preference of heirs—continued.**

duty to confer spiritual benefits by the offering of funeral oblations, either immediately or mediately, confers the right to inherit temporal wealth. **MUTTU VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAH alias KATTAMA NACHIAH v. DORASINGA TEVAR** [6 Mad., 310]

30. ——— Bengal school.—Oblations, Offering of.—According to the Bengal school of law, inheritance goes to him who offers oblations to the deceased, or to ancestors of the deceased, in which oblation the deceased would participate. Where more than one person offers such oblations, succession goes to him who offers oblations to the father of the deceased, and an heir who offers such an oblation will be preferred to an heir who offers oblations to the grandfather and great-grandfather of the deceased. **PRAN NATH SURMA JOWARDAR v. SURUT CHUNDER BHUTTACHARJEE**

[I. L. R., 8 Calo., 460: 10 C. L. R., 484]

31. ——— Heir of last full owner.—The rule of Hindu law is that in the case of inheritance the person to succeed must be the heir of the last full owner. On the death of the last full owner, his wife succeeds as his heir to a widow's estate; and on her death the person to succeed is the heir at that time of the last full owner. **BHOOBUN MOYE DEBIA v. RAM KISHORE ACHARJEE**

[3 W. R., P. C., 15: 10 Moore's L. A., 279]

7. GENERAL HEIRS.**(a) BANDHUS.**

32. ——— Enumeration of bandhus.—Mitakshara.—The enumeration of bandhus, or cognate kindred, given in Mitakshara II, section 6, article 1, is not exhaustive. **GREIDHAREE LALL ROY v. GOVERNMENT OF BENGAL**

[1 B. L. R., P. C., 44: 10 W. R., P. C., 31]

Reversing decision of High Court in **GOVERNMENT v. GREIDHAREE LALL ROY**

4 W. R., 13

(b) GENTILES AND COGNATES.

33. ——— Preference of heirs.—Gentiles.—Cognates.—In looking for an heir under Hindu law, the gentiles must be exhausted before the cognates are entitled to succeed. **DIGDAYI v. BHATAN LAL**

5 B. L. R., 448, note: 11 W. R., 500

(c) SAMANODAKAS.

34. ——— Definition of samanodakas.—“Gotra” of deceased person.—“Samanodakas” (or persons allied by a common oblation of water) belonging to the “gotra” (race or general family) of a deceased person are, according to Hindu law, sufficiently cognate to succeed to property in default of parties nearer of kin. **NUBSING NARAIN v. BHUTTUN LALL**

W. R., 1864, 194

HINDU LAW — INHERITANCE — continued.**7. GENERAL HEIRS—continued.****(c) SAMANODAKAS—continued.****Definition of samanodakas—continued.**

35. ———— *Preference of, to bandhus or bhinnagotra sapindas.—Vatan service, Alienability of, beyond life-time by will.—Effect of subsequent change in the tenure rendering it alienable.*—The word “samanodakas,” meaning literally those participating in the same oblation of water, includes descendants from a common ancestor more remotely related than the thirteenth degree from the *propositus*. One *P.* died childless, devising his entire property, including his right to receive annually a certain *desaigiri* cash allowance, to the plaintiff's husband after the death of his (testator's) widow, *B. A.* The testator and the plaintiff's husband were great-grandsons of one *K.* by his son and daughter respectively. The plaintiff's husband having predeceased *B. A.*, she made another will in favour of the plaintiff. Subsequently *B. A.* died. The plaintiff, thereupon, brought a suit against the defendants, claiming the aforesaid cash allowance and arrears under these wills and as heir of *P.* The defendants, who were distant cousins of *P.*, being related to him beyond the thirteenth degree, *inter alia* contended that the wills were invalid, as *P.*, when he made the will, had only a life interest in the vatan, which was a service vatan, and that they were nearer heirs to *P.* than the plaintiff, who was a bhinnagotra sapinda or bandhu of *P.* Both the lower Courts rejected plaintiff's claim. The plaintiff appealed to the High Court. *Held*, confirming the decree of the lower Court, that plaintiff's claim should be disallowed. The alienation by will by *P.*, of what was then a vatan held for service being in its inception invalid as against his heirs, did not become valid because of a change in the tenure of the estate after his life interest had terminated. *B. A.*, the widow of *P.*, had nothing more than a widow's estate incapable of alienation beyond her lifetime, and, therefore, the wills executed by her were invalid. The case was one to be determined by the Hindu law of inheritance. The defendants, though more than thirteen degrees removed from *P.*, were included in the term “samanodakas,” and, as such, had a claim to the estate of *P.* superior to that of the plaintiff or her deceased husband as his bandhus. *BAI DEVKORE v. AMRITRAM JAMIATRAM*. **I. L. R., 10 Bom., 372**

36. ———— *Collateral distant relation.—Right to share.*—A descendant of a brother of the original acquirer, and a descendant not less than six generations, are not entitled under Hindu law to a share of the property. *CHYTUN MYTIE v. LUKHEE CHURN PATNAIK*. **8 W. R., 258**

(d) SAPINDAS.

37. ———— *Definition of sapindas.*—The author of the *Mitakshara*, in verse 3, section 5, chapter II, uses the word “sapinda” in the sense of “connection by particles of one body,” and not in the sense of “connection by funeral oblations.” In order to determine whether a person is a “sapinda”

HINDU LAW — INHERITANCE — continued.**7. GENERAL HEIRS—continued.****(d) SAPINDAS—continued.****Definition of sapindas—continued.**

of the *propositus*, within the meaning of the definition given by the author of the *Mitakshara* in *Acharakanda* (chapter treating of rituals), it is necessary to see whether they are related as “sapindas” to each other, either through themselves or through their mothers and fathers. *UMAID BAHADUR v. UDOI CHAND alias MUNMUN*

[**I. L. R., 6 Cal., 119; 6 C. L. R., 500**

38. ———— *Preference among sapindas.*—Amongst sapindas the nearest sapinda excludes those more remote. *KHETTUR GOPAL CHATTERJEE v. POORNOO CHUNDER CHATTERJEE*

[**15 W. R., 483**

39. ———— *Extent of right of succession of sapindas.*—Regarding the right of succession of sapindas,—*Held* that the relationship extends to the sixth in descent below the point of divergence of the two lines. The rule laid down by the *Smriti Chandrika* and the literal language of the *Mitakshara* in chapter II, section 5, not followed. *PARASARA BHATTA v. RANGARAJA BHATTA*

[**I. L. R., 2 Mad., 202**

8. SPECIAL HEIRS.**(a) MALES.**

40. ———— *Adopted son.—Kinsmen.*—An adopted son represents his adoptive father, and is entitled to the share which his father would have obtained. When he comes to share with heirs other than the legitimately-begotten sons of his adoptive father in the property of kinsmen, he takes the same share that they would take. *TARA MOHUN BHUTTA-CHARJEE v. KEIPA MOYEE DEBIA*. **9 W. R., 423**

41. ———— *Right of one of family from which he was adopted.*—A member of a Hindu family cannot, as such, inherit the property of one taken out of that family by adoption. The severance of an adopted son from his natural family is so complete that no mutual rights as to succession to property can arise between them. *SRINIVASA AYYANGAR v. KUPPAN AYYANGAR. RAYAN KRISHNAMACHARIYAR v. KUPPANNAYANGAR*. **1 Mad., 180**

42. ———— *Adoptive mother's father.—Brother.*—An adopted son does not succeed to the estate of his adoptive mother's father in preference to the son's son of the brother of the adoptive mother's father. *CHINNARAMAKRISTNA AYYAR v. MINATCHI AMMAL*. **7 Mad., 245**

43. ———— *Mitakshara law.*—An adopted son under *Dattaka Mimamsa* and *Mitakshara* succeeds to property to which his adopted mother succeeded as the heirress of her father. *SHAM KUAR v. GAYA DIN*. **I. L. R., 1 All., 255**

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Adopted son—continued.**

44. ————— *Succession of adopted son to relatives of adoptive mother.*—According to Hindu law, an adopted son takes by inheritance from the relatives of his adoptive mother in the same way as a legitimate son. *Morus Moyes Debea v. Bejoy Kristo Gossames, W. R., F. B., 121*; and *Chinnarama Krishna Ayyar v. Minatchi Ammal, 7 Mad., 245*, overruled. *UMA SUNKER MOITRO v. KALI KOMUL MOZUMDAR*

[*I. L. R.*, 6 Cal., 256; 7 C. L. R., 145

Confirmed by Privy Council, *KALI KOMUL MOZUMDAR v. UMA SUNKER MOITRO*

[*I. L. R.*, 10 Cal., 232; 13 C. L. R., 379
L. R., 10 I. A., 188

JOYKISHORE CHOWDHRY v. PANCHOO BABOO
[4 C. L. R., 538

45. ————— *Share on death of one more than three generations from common ancestor.*—An adopted son is not precluded from inheriting the estate of one related lineally, although at a distance of more than three generations from the common ancestor. *MOKUNDO LALL ROY v. BYKUNT NATH ROY*

[*I. L. R.*, 6 Cal., 289; 7 C. L. R., 478

46. ————— *Collateral inheritance.*—An adopted son inheriting collaterally along with collateral heirs is entitled to receive the same share as the other heirs. The Dattaka Chandrika, section 5, paragraphs 24 and 25, cannot be construed as an express text limiting the share of an adopted son inheriting collaterally to half the share taken by the other collateral heirs. *DINONATH MOOKERJEE v. GOPAL CHUNDER MOOKERJEE*

[8 C. L. R., 57; 9 C. L. R., 379

47. ————— *Succession of adopted son of one daughter and natural son of another.—Grandfather's estate.*—The adopted son of one daughter shares equally with the natural son of another daughter in the inheritance left by his maternal grandfather. *Uma Sunker Moitro v. Kali Komul Mozumdar, I. L. R., 6 Cal., 256*, followed. *SURJO KANT NUNDI v. MOHESH CHUNDER DUTT*

[*I. L. R.*, 9 Cal., 70

48. ————— *Affiliated son.—Custom of illatam.*—*Reddi caste of Nellore.*—Under the custom of *illatam* (affiliation of a son-in-law) which obtains among the Reddis or Pedda Kapu caste of Nellore, the *illatam* son-in-law does not thereby lose his rights of succession to the estate of his natural father's divided brother. *BALARAMI REDDI v. PERA REDDI*

[*I. L. R.*, 6 Mad., 267

49. ————— *Brother's daughter's son.—Mitakshara law.*—A brother's daughter's son succeeds as heir, under the Mitakshara, in the absence of nearer heirs. *DURGA BIBEK v. JANAKI PERSHAD*
[10 B. L. R., 341; 18 W. R., 331

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Brother's daughter's son—continued.**

50. ————— *Great-grandson of paternal grandfather.*—By the Hindu law the great-grandsons of the paternal grandfather are entitled to succeed as heirs to the deceased proprietor, and are to be preferred to the brother's daughter's son, because, although the former can offer but one oblation and the latter two, yet that offered by the former is offered to a paternal ancestor, and is, therefore, of superior religious efficacy to those offered by the latter, which are to maternal ancestors only. *GOBIND PROSHAD TALOOKDAR v. MOHESH CHUNDER SURMA GHUTTUCK* . 15 B. L. R., 35; 23 W. R., 117

See IN THE MATTER OF OODOY CHURN MITTER

[*I. L. R.*, 4 Cal., 411

And *JUGGUT NARAIN SINGH v. COLLECTOR OF MANBHOO* . *I. L. R.*, 4 Cal., 413, note

51. ————— *Bengal school of Hindu law.—Sapinda.*—According to the Bengal school of Hindu law a brother's daughter's son is a sapinda, and is, therefore, a preferable heir to the great-great-great-grandfather's great-great-great-grandson. *DIGUMBER ROY CHOWDHRY v. MOTI LAL BUNDOPADHYA*

[*I. L. R.*, 9 Cal., 563; 12 C. L. R., 204

Contra, CHOORAL MONER BOSE v. PROSONNO COOMAR MITTER 1 W. R., 43

52. ————— *Brother's son's daughter's son.—Brother's son's son's son.*—The right of inheritance of a brother's son's daughter's son is inferior to that of a brother's son's son's son. *KASHEE MOHUN ROY v. RAJ GOBIND CHUCKERBUTTY*
[24 W. R., 229

53. ————— *Cousin.—Uncle's son.—Childless daughter.*—According to the Hindu law, an uncle's son succeeds in preference to a childless widowed daughter. *TARAMONEE GOOPTHA v. LUKHEEMONEE DASSEA* . *Marsh.*, 29; 1 Hay, 67
[1 Ind. Jur., O. S., 22

54. ————— *Cousin in third degree.*—Held that a cousin in the third degree has no right of inheritance in the presence of cousins in the second degree. *MAHABEE PERSAD v. RAM SURUN* 3 Agra, 6

55. ————— *Daughter's son.—Brother's son.*—A daughter's son is one of the nearer sapindas, and in the line of heirs before a brother's son according to Hindu law. *KRISHNAMMA v. PAPA*

[4 Mad., 234

56. ————— *Under the Hindu law, where property is proved to be a separate and divided property, the daughters and daughter's son are the legal heirs entitled to it, and not more remote relations to the deceased.* *BURYAR SINGH v. HUNSEE*
[2 Agra, 166

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Daughter's son—continued.**

See **GOLAB KOONWER v. SHIB SAHAI**
[2 Agra, 54
and **HIMUNCHULL v. MAHARAJ SINGH**
[1 Agra, 210

57. ———— Death of widow of last male proprietor.—A daughter's son is on the death of the widow of the last male proprietor a preferable heir to descendants in the third or fourth remove. **HIMUNCHULL v. MAHARAJ SINGH**
[1 Agra, 210

BURYAR SINGH v. HUNSEN . 2 Agra, 168

58. ———— Law at Benares.
—Held that, according to Hindu law current at Benares, the daughters' sons inherit in default of qualified daughters; and that if there be sons of more than one daughter they take *per capita*, and not *per stirpes*. **RAM SAWRUTH PANDEY v. BASDEO SINGH**
2 Agra, 168

So in Madras. **MUTTU VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAE alias KATTAMA NACHIAE v. DORA SINGHA TEVAR**
[6 Mad., 310

59. ———— Succession to cultivator.—*Distant relation.*—A distant relation (such as those who are called distant sapindas and samandakas) of a deceased ryot is not entitled to succeed by inheritance to the cultivation of a hereditary ryot. Held, with reference to the above principle, that the son of the daughter is too remote to succeed to the tenure of cultivating occupancy held by his maternal grandfather. **RAM SURUN SOKOOL v. SHEORUTUN KOORMEN** . . . 2 Agra, Pt. II, 168

60. ———— Mother's sisters.
—According to Hindu law, a deceased daughter's son has no right of inheritance to the estate of his maternal grandfather during the life of any of his mother's sisters. **RAMDAN v. BEHAREE LALL**
[1 N. W., 114: Ed. 1873, 200

61. ———— Mitakshara law.
—According to Mitakshara law a daughter's son takes his maternal grandfather's estate as full proprietor, and on his death such estate devolves on his heirs and not on the heirs of his maternal grandfather. His gotraja-sapindas, or the persons related to him through his father, have, therefore, preferential right to succeed him to the persons related to him through his mother. **SIBTA v. BADRI PRASAD**
[I. L. R., 3 All., 134

62. ———— Adopted son of daughter.—*Brothers.*—According to Hindu law a person cannot succeed as the adopted son of a daughter who has brothers alive, and who cannot be an appointed daughter if she had brothers when she married. Nor can he succeed as claiming under a bought son. **YACHREDDY CHINNA BASSAVAPA v. YACHREDDY GOWDAPA** . . . 5 W. R., P. C., 114

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Daughter's son—continued.**

63. ———— Great-grandson.
—A daughter's son does not inherit where there is a great-grandson of the deceased alive. **GOOROO-GOBINDO CHOWDHRY v. HURSE MADHUB ROY**
[Marsh., 398: 2 Hay, 401

64. ———— Estate of maternal grandfather.—*Daughter.*—A suit brought against *K.*, the widow of *R.*, a Hindu, by the representatives of *R.*'s brothers, *H.* and *P.*, for possession of his estate, ended in a compromise by which the defendant recognised the plaintiffs' rights, and conceded that the family was joint. After *K.*'s death, *M.*, a daughter of *R.*, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently *S.*, *M.*'s son, who had been born after *K.*'s compromise, brought a suit against *M.* and the representatives of *H.* and *P.* to recover possession of the estate, on the allegation that the family being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by *K.* and the withdrawal of the former suit by *M.* were in fraud of his succession, and did not affect his rights. The Court of first instance found that the plaintiff was entitled to succeed to the estate, but that, his mother being still alive, he was entitled to possession after her death only, and, upon these findings, gave him a decree declaring his right to possession on *M.*'s death. The lower Appellate Court reversed the decree, holding that the compromise entered into by *K.* was conclusive against the plaintiff's claim, and also that, during his mother's lifetime, he had no *locus standi* to maintain the suit. *Per MAHMOOD, J.*, that the plaintiff's rights as a daughter's son (which were not affected by his birth having taken place after his maternal grandfather's death) did not entitle him, under ordinary circumstances, to succeed to his maternal grandfather's estate in a divided Hindu family, during the existence of a daughter, whether she were his own mother or his maternal aunt; and that the claim for possession was therefore rightly dismissed. **Amirtolal Bose v. Rajoneekant Mitter**, 15 B. L. R., 10; **Sibta v. Badri Prasad**, I. L. R., 3 All., 134; and **Bajinath v. Mahabir**, I. L. R., 1 All., 608, referred to. **SANT KUMAR v. DEO SARAN** . . . I. L. R., 8 All., 365

65. ———— Estate of sonless Hindu.—In the case of a sonless Hindu, his separate estate devolves, in the first instance, upon his widow or widows, and thereafter upon the daughter or daughters, and it is not till the death of the daughter that the daughter's son's right of inheritance initiates; and the death of a daughter's son antecedent to the death of a daughter would prevent the estate from devolving upon the son of such daughter's son. **DHARUP NATH v. GOBIND SARAN. GOBIND SARAN v. DHARUP NATH**
[I. L. R., 8 All., 614

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.**

66. ———— **Father.**—*Law in Gujarat.—Mother.*—In Gujarat the right of succession to the estate of a Hindu who is separate in interest, and who, at his death, leaves a father and mother, but no issue or widow, devolves upon the father, in preference to the mother. **KHODABHAI MAHIJI v. BARDHAR DALA** [I. L. R., 6 Bom., 541]

67. ———— **Father's brother's daughter's son.**—A father's brother's daughter's son cannot inherit according to Hindu law. **GOBINDO HUREKAR v. WOOMESH CHUNDER ROY** [W. R., F. B., 176]

RAJ GOBIND DRY v. RAJESUREN DOSSEE [4 W. R., 10]

68. ———— **Sapinda.**—A father's brother's daughter's son is entitled to be recognised as an heir according to the Hindu law current in the Bengal school. **GURU GOBIND SHAHA MANDAL v. ANAND LAL GHOSE MAZUMDAR** [5 B. L. R., F. B., 15: 13 W. R., F. B., 49]

69. ———— **Spiritual benefit.**—*Father's father's brother's son.*—The father's father's brother's son of a deceased person stands nearer to him in right of succession than his father's brother's daughter's son; the former is therefore preferentially entitled, on the death of the deceased person's widow, to a certificate under Act XXVII of 1860, enabling him to collect the debts due to the estate. **GOPAL CHUNDER NATH COONDOL v. HARIDAS CHINTI** . . . I. L. R., 11 Calc., 343

70. ———— **Father's sister's son.**—*Great-grandson of great-great-grandfather.*—A father's sister's son does not inherit when opposed to the great-grandson of the great-great-grandfather of the deceased. **JIBNATH SINGH v. COURT OF WARDS** . . . 5 B. L. R., 442: 14 W. R., 117

S. C. on appeal to Privy Council
[15 B. L. R., 190: 23 W. R., 409
L. R., 2 I. A., 163]

71. ———— **Grandson.**—*Mitakshara law.*—Under the Mitakshara law, a grandson (his father being dead) shares equally with a son the self-acquired property of the grandfather. **LUCHOMUN PERSHAD v. DEBEE PERSHAD** . . . 1 W. R., 317

72. ———— **"Sons" as used in the Mitakshara.**—The term "sons" used in Mitakshara, chapter II, section 4, § 7, and section 5, § 1, does not include grandsons. **SURAYA v. LAKSHMINARASAMMA** . . . I. L. R., 5 Mad., 291

73. ———— **Grandson of brother.**—*Mitakshara law.*—Under the Mitakshara law a brother's grandson may be an heir. **OORHYA KOOR v. RUJOO NYE SOOKOOL** . . . 14 W. R., 208

KUREEM CHAND GUSAIN v. OODUNG GUSAIN
[6 W. R., 153]

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Grandson of brother—continued.**

74. ———— **Law in Madras Presidency.**—*Paternal uncle's son.*—According to the Hindu law of succession current in the Madras Presidency, a paternal uncle's son succeeds to the inheritance before a brother's grandson. **SURAYA v. LAKSHMINARASAMMA** . . . I. L. R., 5 Mad., 291

75. ———— **Grandson of maternal grandfather's brother.**—According to Hindu law the grandson of a brother of a grandfather of the deceased is heir to his property in default of nearer heirs. **BRAJA KISHOR MITTER MOZUMDAR v. RADHA GOBIND DUTT** [3 B. L. R., A. C., 435: 12 W. R., 339]

76. ———— **Grandson of mother's maternal uncle.**—*Bandhu.*—According to the Hindu law of succession in force in the Madras Presidency, the grandson of the maternal uncle of the deceased's mother is in the line of heirs. **RATNASUREBU v. PONNAPPA** . . . I. L. R., 5 Mad., 69

77. ———— **Great-grandson.**—*Son of son's son.*—*Daughter's son.*—According to the Hindu law of descent, the son of a son's son is preferred, in the order of succession, before a daughter's son. **GOOROO-GOBINDO CHOWDHRY v. HURREEMADHUS ROY** [Marsh., 398: 2 Hay, 401]

78. ———— **Sons of grand-daughter.**—According to the Hindu law which prevails in Madras, the sons of a granddaughter are excluded from the inheritance. The plaintiff brought a suit for a moiety of the estate of his deceased second cousin, who left no issue or nearer kindred, claiming through his maternal great-grandfather. *Held* that the plaintiff was not entitled to inherit the estate of the deceased. **KISSEN LALA v. JAYALLA PRASAD LALA** . . . 3 Mad., 346

79. ———— **Great-grandson of great-great-grandfather.**—*Mitakshara law.*—*Great-grandson.*—*Bandhu.*—*Gentiles.*—*Father's sister's son.*—The great-grandson of the great-great-grandfather of the deceased is, according to the Mitakshara, a nearer heir to the deceased than his father's sister's son. **JIBNATH SINGH v. COURT OF WARDS** . . . 5 B. L. R., 442: 14 W. R., 117

S. C. on appeal to the Privy Council
[15 B. L. R., 190: 23 W. R., 409
L. R., 2 I. A., 163]

80. ———— **Great-great-grandson of grandson.**—*Samonadaka.*—*D.*, being the grandson's great-great-grandson of the common ancestor, who was the ninth in ascent from *K.*, deceased, was reckoned as a samonadaka and among the heirs of *K.* **KALIAN SINGH v. PANKUAB** . . . 7 N. W., 338

81. ———— **Great-great-great-grandson of great-great-great-grandfather.**—*Mitakshara law.*—*Gentiles.*—According to the Mitakshara the

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Great-great-great-grandson of great-great-great-grandfather—continued.**

great-great-great-grandson of the great-great-great-grandfather of the deceased is entitled to succession as one of the gentiles. *BYHA RAM SINGH v. AGAR SINGH* . 5 B. L. R., 298: 14 W. R., P. C., 1 [18 Moore's I. A., 373]

82. ——— Half-brothers.—Brothers of the whole-blood and of the half-blood.—By the Hindu law current in Bengal a brother of the whole-blood succeeds in the case of an undivided immovable estate in preference to a brother of the half-blood. Overruling *Tiluck Chunder Roy v. Ram Luckhee Dossee*, 2 W. R., 41; *Koylash Chunder Sircar v. Gooroo Churn Sircar*, 3 W. R., 43; *Gooroo Churn Sircar v. Koylash Chunder Sircar*, 6 W. R., 93. *RAJKISHORE LAHOORY v. GOBIND CHUNDER LAHOORY*. RAMMONY DOSSEE v. GOBIND CHUNDER LAHOORY

[I. L. R., 1 Cal., 27: 24 W. R., 234]

ISHEN CHUNDER CHOWDHRY v. BEYRUB CHUNDER CHOWDHRY . . . 5 W. R., 21

83. ——— Nephew of half-blood.—Brothers of whole and half blood.—A nephew of the half-blood is excluded from succession by brothers of the whole and half blood. *PEITHEN SINGH v. COURT OF WARDS* . 23 W. R., 272

84. ——— Brothers of whole and half blood.—Where two uterine brothers and a half-brother are members of a joint Hindu family, and one of the two former dies, the brother of the half-blood is not entitled to receive anything out of the share of the deceased. *CHETT NARAIN SINGH v. BUNWARREN SINGH* . 23 W. R., 395

85. ——— Rule of succession as between relatives of the whole-blood and half-blood.—Brothers.—Brothers' sons.—Collaterals.—The plaintiffs (along with others not parties to the suit) were relations of the half-blood to the *propositus*, and the defendants were his relations of the whole-blood; but, counting from the ancestor, the plaintiffs were sapindas of the fifth degree, and some of the defendants sapindas of the sixth, and the rest sapindas of the seventh degree of the *propositus*. Held that there not being any special provision in the Mitakshara or the Mayukha in respect of persons of the half-blood other than brothers and their sons, the general rule applies, that the nearest sapinda succeeds in the absence of special local custom to the contrary, and, therefore, the plaintiffs were the heirs of the *propositus* to the exclusion of the defendants or any of them. *SAMAT v. AMRA*

[I. L. R., 6 Bom., 394]

86. ——— Dayabhaga law.—According to the Dayabhaga a brother of the whole-blood in a joint family succeeds in preference to the brother of the half-blood to the share of a deceased brother. *Rajkishore Lahoory v. Gobind*

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Half-brothers—continued.**

Chunder Lahoory, I. L. R., 1 Cal., 27: 24 W. R., 234, approved. *SHEO SOONDARY v. PIRTHE SINGH* [I. L. R., 4 I. A., 147]

87. ——— Sons of half-sisters.—*Succession to estate of deceased brother.—Half-blood and whole-blood.*—Under the Bengal school of Hindu law, sons of sisters of the half-blood are entitled to succeed equally with sons of sisters of the whole-blood to the property of a deceased brother. *BHOLANATH ROY v. RAKHAL DASS MUKHERJI* [I. L. R., 11 Cal., 69]

88. ——— Husband.—Childless wife.—Gift at marriage.—If a Hindu wife dies childless, all property given to her by her father at the marriage ("before the nuptial fire") goes to the husband. "Given before the nuptial fire" is only a term to signify all gifts during the continuance of the marriage ceremonies. *BISTOO PERSHAD BUREAL v. RADHA SOONDRE NATH* . . . 16 W. R., 115

89. ——— Husband, Heirs of.—Childless widow.—Nagar Vissa Vania caste.—Property inherited from her deceased husband by a childless widow among the Nagar Vissa Vanias, at her death, intestate, devolves on the relations in blood, on the mother's side, of the husband in preference to the heirs and next of kin of the widow. *IN THE GOODS OF NATHIBAI. JAIKISEN DAS GOPAL DAS v. HARKISEN DAS HULLODHAR DAS* . I. L. R., 2 Bom., 9

90. ——— Nephew.—Mitakshara law.—Under the Mitakshara a nephew succeeds, not as the heir of his father, but as the direct heir of his uncle. *BROJO MOHUN THAKUR v. GOUREE PERSHAD CHOWDHRY* . . . 15 W. R., 70

91. ——— In default of brothers, brothers' sons succeed, taking according to numbers, and not by representation as grandsons; but brothers' sons are totally excluded by the existence of brothers. *BROJOKISHORE DOSSI v. SEEN NATH BOSE* . . . 9 W. R., 463

92. ——— Brother.—Joint undivided family.—Where, in an undivided Hindu family living under the Mitakshara law, a person dies without leaving issue, but leaving a brother and a nephew, the son of a predeceased brother, the latter is not excluded from succession by the former. *BRIMUL DOSS alias LALL BABOO v. CHOONER LALL* [I. L. R., 2 Cal., 379]

93. ——— Property purchased by widow benami for a relation.—Stepson.—A stepson made over property to his stepmother for her support. Out of the produce she bought properties for her nephew in the names of other parties. Held, under the circumstances, that the purchased property, on her death, went to the nephew and not to the stepson as heir of her husband. *CHANDRANATH ROY v. RAMJAI MAZUMDAR* [6 B. L. R., 303: 15 W. R., P. C., 7]

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Nephew—continued.**

94. ———— *Succession to cultivator.*—On the death of a ryot having right of occupancy, a nephew may succeed to his holding by right of inheritance if he were residing with him in the village, and not elsewhere. **DOORGA PRESHAD v. DOOCHUR PRESHAD** . . . 3 Agra, 188

95. ———— *Succession to tenant right.—Custom.*—In the absence of any evidence of special custom, a nephew cannot inherit the tenant-right from his uncle, whose legal heirs were his sons. **OMRAO SINGH v. PERTAB** . 3 Agra, 148

96. ———— *Interest of members in share that lapses.*—Though a Hindu family may be joint and in union, all the members do not necessarily share in a portion that may lapse,—e.g., a brother's son takes his own share as well as the lapsed share of a brother's son in preference to the grandsons of another brother. **MADHO SINGH v. BINDSERY ROY** . . . 3 Agra, 101

97. ———— *Separated son.—Father's widow.—Inheritance not subject to obstruction.*—Under the Mitakshara law a divided son (no undivided sons surviving) is entitled to succeed to his father's share in preference to his father's widow. The son's right of inheritance under Hindu law is distinguished from that of all other heirs in that it is "a pratibandha," not liable to obstruction, and the functions assigned to the son, and the character ascribed to him in the religious system of the Hindus, explain the preference in the succession accorded to him. **RAMAPPA NAICKEN v. SITHAMMAL** . I. L. R., 2 Mad., 182

98. ———— *Relinquishment of share by son.—Disinheritance.—Private arrangement.—Widow.—Separated son.*—The effect of a Hindu son relinquishing for a sum of money his share in the property of his father, natural or adoptive, and agreeing not to claim it during or after his father's lifetime, is to place him in the position of a separated son. The relinquishment does not amount to disinheritance. If, therefore, the father on such relinquishment makes an alienation of his estate, it will take effect, but otherwise his separated son will inherit in preference to his widow. **BALKRISHNA TRIMBAK TENDULKAR v. SAVITRIBAI** [I. L. R., 3 Bom., 54

99. ———— *Mitakshara.—Partition.—Right of son, born after partition, to father's property.*—The property acquired by a Hindu governed by the law of the Mitakshara after a partition has taken place between him and his sons devolves on his death, when he leaves a son born after partition, on such son, to the exclusion of the other sons. **NAWAL SINGH v. BHAGWAN SINGH** [I. L. R., 4 All., 427

100. ———— *Sons of a separated brother.—Vyavahara Mayukha, ch. iv., sec. 8.—Widow of a united brother's son.*—The sons of a separated brother

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Sons of a separated brother—continued.**

inherit in preference to the widow of the son of an undivided brother. **NAHALCHAND HARAKCHAND v. HEMCHAND** . . . I. L. R., 9 Bom., 31

101. ———— *Separated brothers.—United brother.—Survivorship, Right of.*—Two Hindu brothers who hold the ancestral estate in common with a third brother may nevertheless hold self-acquired property in common between themselves in such a manner as to give a right of survivorship to one of themselves. Leaving out of the question the survivor's right to succeed, and looking at the half share of the deceased brother as having been held separately on his own account, his heir in respect of that property would be his widow, and during her lifetime the third brother could have no right of succession. **SHAM NARAIN v. COURT OF WARDS** [20 W. R., 197

102. ———— *Reunion.—Succession of reunited members.*—In a Hindu family, when, after partition, certain members of the family reunite,—Held that if a reunion actually takes place between the proper parties, their representatives and descendants, however remote, will remain joint until a fresh partition takes place. The members of the reunited family and their descendants succeed to each other, to the exclusion of the members of the unassociated or not reunited branch. **TARA CHAND GHOSE v. PUDUM LOCHUN GHOSE** [5 W. R., 249: 1 Ind. Jur., N. S., 207

103. ———— *Requisites for proof of reunion.*—According to Hindu law, mere living together in one residence or joint trade does not constitute a reunion after partition, but there must be junction of estate. When such reunion is satisfactorily established, Courts are bound to give a preference to the reunited parceners to the exclusion of the members or their issue who have not been so reunited. **GOPAL CHUNDRA DAGHORIA v. KENABAM DAGHORIA** . . . 7 W. R., 35

104. ———— *Separated brothers.*—A., one of four brothers in joint possession of ancestral property, separated himself in food, worship, and estate, leaving his three brothers jointly possessed of their undivided three-fourth shares. A. died unassociated, leaving a son and heir, B. The three brothers continued and died associated, two without heirs, and a third leaving a son and heir, C. Held B. had no claim to any part of the undivided three-fourth shares as against C., who took the whole absolutely. **JADUB CHUNDER GHOSE v. BENODDEHARY GHOSE** . . . 1 Hyde, 214

105. ———— *Reunion of descendants of members.—Reunion not affecting inheritance.*—Held that after separation reunion in order to affect the inheritance must be made by the parties, or some of them, who made the separation. If any of their descendants think fit to unite they may do so;

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Reunion—continued.**

but such a union is not reunion in the sense of the Hindu law, and does not affect the inheritance. **VISVANATH GUNGADHUR v. KRISHNAJI GUNESH** [3 Bom., A. C., 69]

106. — *Separated brother.*—Of three brothers forming together a joint Hindu family, one separated himself therefrom, and died leaving a son, the plaintiff. The other two with their families remained joint: one died leaving a son, the defendant; the other died leaving a widow. On the widow's death this suit was brought to establish the plaintiff's right as one of the two next reversionary heirs. *Held* that a separated brother does not inherit, and that the defendant was alone entitled to succeed. *Quære*, as to the effect of reunion in inheritance. **KESABRAM MAHAPATTAR v. NANDKISHOR MAHAPATTAR**

[3 B. L. R., A. C., 7; 11 W. R., 308]

107. — *Separated and reunited brothers.—Widow.*—A Hindu died leaving a widow, a brother, and two nephews, the plaintiff and the defendant. The brother was the defendant's father; he and the widow were since dead, the widow having died in the brother's lifetime. The plaintiff claimed to be entitled to a moiety of the estate of the deceased by inheritance. The defendant claimed the whole on the ground that the deceased lived as a reunited or associated brother with his (the defendant's) father, whereas the plaintiff was the son of a separated brother of the deceased. *Held* that the material issue to be tried in the case was whether the widow lived in a state of reunion with the defendant, as her husband had done with the defendant's father, or whether she at the time of her death lived separate from him though in the same family house. **RAMHARI SARMA v. TRIHIRAM SARMA**

[7 B. L. R., 337; 15 W. R., 442]

108. — *Presumption.—Marriage of daughter into another family.*—A partition having taken place among three brothers, *A*, *B*, and *C*, the members of a joint family, two of the brothers, *A* and *B*, subsequently reunited. *A* died leaving two grandsons. On the death of *B* leaving a daughter, who married but subsequently died without male issue, the grandsons and the sole representative of *C*, who also had died, claimed to be entitled as one of the reversionary heirs of *B* to one-third of his property. *Held* that the daughter of *B* having married into another family, no presumption could be drawn from the reunion of *A* and *B* that the coparcenary continued as between the descendants of *A* and *B* up to the death of *B*'s daughter. **KRODESH SEN v. KAMINI MOHUN SEN**

10 C. L. R., 161

109. — *Sister's daughter's son.—Inheritance.—Mitakshara.—Sister's daughter's son.*—A sister's daughter's son is an heir according to the Mitakshara. **UMAIID BAHADUR v. UNOI CHAND alias MUNMUN**

[I. L. R., 6 Calc., 119; 6 C. L. R., 500]

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.**

110. — *Sister's son.—Mitakshara.*—In the absence of nearer relatives a man may be heir to his mother's brother as regards property subject to the Mitakshara. **AMRITA KUMARI DEBI v. LUKHINARAYAN CHUCKERBUTTY**

2 B. L. R., F. B., 28

S. C. OMBIT KOOMAREE DABEE v. LUCKHEE NARAIN CHUCKERBUTTY

10 W. R., F. B., 76

111. — *Mitakshara and Mithila law.*—A sister's son, except in Bengal, is no heir according to the Mitakshara or the Mithila school. **JOWAHIR RAHOOT v. KAILASSOO**

[1 W. R., 74]

112. — *A sister's son is not an heir according to law.* **BHEEM RAM CHUCKERBUTTY v. HUREE KISHORE ROY**

[1 W. R., 359]

113. — *Death of last female heir of uncle.*—If a sister's son is alive at the death of his uncle's last preceding female heir who succeeded to the property, he takes the succession. **SEETA RAM GOSSAIN v. FAKHEER CHAND CHUCKERBUTTY**

15 W. R., 433

See RASHEBHAREE ROY v. NIMAYE CHURN

[W. R., 1864, 223]

114. — *Mother's sister's son.*—According to the general principles of Hindu law a sister's son is a preferential heir to a mother's sister's son, as being capable of conferring greater spiritual benefits upon the soul of the deceased. **GONESH CHUNDER ROY v. NIL KOMUL ROY**

[22 W. R., 264]

115. — *According to the Mitakshara a sister's son cannot inherit.* **THAKOORAIN SAHIBA v. MOHUN LALL**

[7 W. R., P. C., 25; 11 Moore's I. A., 386]

116. — *Law in Madras.*—According to the Hindu law in force in the Madras Presidency, a sister's son does not inherit. **DOR D. KULLAMMAL v. KUPPU PILLAI**

[1 Mad., 85]

117. — *Bandhu.*—According to the Hindu law of succession in force in the Madras Presidency, a sister's son is in the line of heirs. *Semble.*—He is a bandhu. **CHELIKANI TIRUPATI RYANINGARU v. SUBANENI VENCATA GOPALA NARASIMHA RAU**

6 Mad., 278

118. — *Sapinda.*—A sister's son does not succeed as a sapinda. **STRINIVASA AYYANGAR v. RENGASAMI AYYANGAR**

[I. L. R., 2 Mad., 304]

119. — *Bandhu.*—According to the Hindu law current in the Madras Presidency, assuming that a sister is entitled to inherit as a bandhu, the claims of a sister's son are

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(a) MALES—continued.****Sister's son—continued.**

superior. *Kutti Ammal v. Radakrishna Aiyar*, 8 *Mad.*, 88, approved. *LAKSHMANAMMAL v. TIRUVENGADA MUDALI*. . . *I. L. R.*, 5 *Mad.*, 241

120. ————— *Mitakshara law*.—By the Mitakshara, a male descendant in the fifth degree from the great-grandfather of the *proporitus* succeeds to the exclusion of the sister's son. *GOLAB SING v. RAO KURUN SING. RAO KURUN SING v. MAHOMED FYAZ ALI KHAN*

[10 *B. L. R.*, *P. C.*, 1
14 *Moore's I. A.*, 176, 187

121. ————— *Uncle.—Maternal uncle.—Father's maternal uncle.*—The maternal uncle and the father's maternal uncle will take as heirs in preference to the Crown. *GREIDHARI LALL ROY v. GOVERNMENT OF BENGAL*. . . *I. B. L. R.*, *P. C.*, 44
[10 *W. R.*, *P. C.*, 31

Reversing decision of High Court in *GOVERNMENT v. GREIDHARI LALL ROY*. . . 4 *W. R.*, 13

122. ————— *Maternal uncles.—Mother's sister's sons.—Bandhus.*—Maternal uncles are included in the class of bandhus, and succeed in priority to mother's sister's sons. *MOHANDAS v. KRISHNABAI*. . . *I. L. R.*, 5 *Bom.*, 597

(b) FEMALES—GENERAL RULES.

123. ————— *Succession of female heirs.—Nature of property.*—It is not the universal rule that a Hindu woman cannot inherit so long as there is a male representative of the family. Her right to inherit depends on the nature of the property. If the property be the joint property of an undivided Hindu family, females are only entitled to maintenance; but if the property be held as a separate or divided property it devolves upon the female heirs in their proper order of succession. *SOORJOON v. ISHERN BRAHMAN*. . . 3 *N. W.*, 74

124. ————— *Exclusion of female heirs.—Mitakshara law.—Joint property.*—When it is sought to exclude female heirs from succession to a husband or father under the Mitakshara, on the ground that the estate is joint, it must be shown to have been so at the time of the husband's or father's death, and not merely at the death of a predeceasing brother, the father of the claimant. *PITUM KOONWAR alias MUNAB BEBEE v. JOY KISHEN DOSS*. . . 6 *W. R.*, 101

125. ————— *Limited estate in immoveable property inherited by females who have become members of family by marriage.—Absolute estate in immoveable property taken by females who have not become members of family by marriage.—Nature of estate taken by widow, mother, grandmother, daughter, sister, maternal great-niece.*—A maternal great-niece inheriting property is in the same position, as regards the nature

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Succession of female heirs—continued.**

of the estate taken by her, as a daughter or a sister. The rule which, in the Presidency of Bombay, restricts the alienation of property by a widow succeeding to her husband or a mother succeeding to her son, does not apply to women who have not become members of the family by marriage: *e.g.*, a daughter takes an absolute estate in the property which she inherits from her father, and a sister takes a like estate in property inherited from her brother. The above rule, which restricts the alienation of property by a widow inheriting from her husband or by a mother inheriting from her son, would seem to be applicable to a grandmother inheriting from her grandson, or to the widow of a sapinda, for they, like the widow and mother, enter by marriage into the family whence the property comes which they inherit. The plaintiff sued to recover the moveable and immoveable property left by his brother's widow, *L.*, who died without issue. The property in question had been given to *L.* and her grandmother, *R.*, jointly by *R.*'s sister, *M.* (*L.*'s maternal grandaunt), who executed to them a deed of gift dated 17th December 1843. On her death, *R.* and *L.* took possession, and remained in joint possession until the death of *R.* which occurred in 1867. *L.* was thenceforward, until her death, on April 19th, 1869, in sole possession. The plaintiff had obtained a certificate of heirship to *L.* under Bombay Regulation VIII of 1827. The defendants were *L.*'s first cousins once removed. They claimed under a deed of gift executed to them dated 27th February 1869, and duly registered. The Subordinate Judge allowed the plaintiff's claim, holding the deed of gift to be *ultra vires* both as to the moveable and immoveable property. On appeal to the District Court the Judge varied the decree of the lower Court, holding the deed of gift to be *ultra vires* only as to the immoveable property, and he varied the decree by awarding to the plaintiff, as heir of *L.*, the immoveable property only. On appeal to the High Court the only question argued was the nature of the estate taken by *L.* in the immoveable property, her absolute right to the moveable property being admitted. *Held* that, whether *L.* took by grant or by inheritance from *M.*, she took an absolute estate; and being, as she was, without issue, had complete power to execute the deed of gift in favour of the defendants. *TULJARAM MORARJI v. MATHURADAS*. . . *I. L. R.*, 5 *Bom.*, 662

126. ————— *Brother's son's daughters.*—A brother's son's daughters are not heirs according to Hindu law. *RADHA PRABEE DOSSIE v. DOORGA MONIE DOSSIA*. . . 5 *W. R.*, 131

127. ————— *Daughters.—Mitakshara law.—Son's daughter.*—According to the Mitakshara law, a daughter or son's daughter does not inherit. *KOOMUD CHUNDER ROY v. SREERAM ROY*

[*W. R.*, *F. B.*, 75

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Daughters—continued.**

128. ————— *Widow.*—The daughter has no right where there is a widow of the deceased. **MUTTU VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAI alias KATTAMA NACHIAI v. DORASINGA TEVAR** **6 Mad., 310**

129. ————— *Descendants in third and fourth degree.*—A daughter is, on the death of the widow of the last male proprietor, a preferable heir to descendants in the third and fourth remove. **HIMUNCHULL v. MAHARAJ SINGH** . . . **1 Agra, 210**
BUTYAR SINGH v. HUNSEN . . . **2 Agra, 186**

See GOLAB KOONWER v. SHIB SAHAI
[2 Agra, 54]

130. ————— *Absence of male issue or widow.*—The general rule of Hindu law is that if a man die separate in estate from his kinsmen without leaving male issue or a widow surviving him, his daughters inherit his moveable and immovable property. **NARAYAN BABAJI v. NANA MONOHAR**
[7 Bom., A. C., 153]

131. ————— *Unmarried daughter.*—According to the Mitakshara law, a maiden daughter does not succeed to her father in preference to her paternal uncle. **TOOLSEN v. MOHADDEB RAOT** **6 W. R., 197**

132. ————— *Unmarried or married daughters.*—Unmarried or married daughters, on whom as a class paternal property devolves, take a joint life-interest with rights of survivorship. The estate of inheritance passes from their father to the sons of all the daughters as his nearest heirs; and on the death of the last surviving daughter the sons take the property equally. **MUTTU VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAI alias KATTAMA NACHIAI v. DORASINGA TEVAR** . . . **6 Mad., 310**

133. ————— *Self-acquired immovable property.*—*Widow.*—A Hindu died possessed of self-acquired property in land, leaving no sons or sons' sons, but one widow, a daughter by the widow, and another daughter by an elder wife, deceased. The last died in the widow's lifetime, leaving two sons. *Held* that the daughters as co-heiresses took an estate in remainder vested in interest on their father's death, and that such vested right, on the death of one of them during the widow's lifetime, passed by inheritance to her sons, who upon the widow's death became entitled to enter into possession of their mother's half as her representatives. The widow in Western India has only a particular estate for life in the immovable separate property of her deceased husband. **JAMITYATRAM v. BAI JAMNA**
[2 Bom., 10; 2nd Ed., 11]

Dissented from in **LAKSHMIRAI v. GANPAT MOWBA**
[5 Bom., O. C., 128]

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Daughters—continued.**

134. ————— *Childless widowed daughter.*—A childless widowed daughter having no possibility of continuing the line of inheritance, can never inherit. **LUKHEEMONEE DOSSEE v. TARAKHONNE GOOPTRA** . . . **1 Ind. Jur., O. S., 22**
[Marah., 29; Hay, 67]

135. ————— *Mitakshara law.*—*Semle.*—According to the Mitakshara law, a married daughter with male offspring is entitled to inherit in preference to a sonless widowed daughter. **GOOOOLANUND DASS v. WOOMA DASS**
[15 B. L. R., 405; 23 W. R., 340]

In the same case on appeal to the Privy Council it was held that in the case of inheritance by daughters on default of nearer heirs, no preference is awarded by the authorities recognised by the Benares school of Hindu law in Upper India to a daughter who has, or is likely to have, male issue, over a daughter who is barren or a childless widow. *Semle.*—Under the law of the Benares school a married daughter who is indigent succeeds to the inheritance of her deceased father in preference to a married daughter who is wealthy. **WOOMA DASS v. GOOOOLANUND DASS** . . . **I. L. R., 3 Calc., 587; 2 C. L. R., 61**
[L. R., 5 I. A., 40]

136. ————— *Barren daughters.*—Sonless or barren daughters are not excluded from inheritance by their sisters who have male issue. **SIMMANI ANMAL v. MUTTAMMAL**
[I. L. R., 3 Mad., 265]

137. ————— *Married daughters.*—*Daughter having son.*—*Priority.*—*Unendowed daughter.*—As between two married daughters, the circumstance of having a son is no qualification, on this side of India, giving the married daughter having a son a prior claim to the inheritance of her parent's property over the married daughter not having a son; such priority of claim depending on the several daughters being respectively endowed (*sadhun*) or unendowed (*nirdhun*), the unendowed daughter having the preference. **BAKUBAI v. MANOHABAI**
[2 Bom., 5]

138. ————— *Test of daughter's priority.*—On this side of India having male issue does not determine the right to inherit. Comparative poverty is the only criterion for settling the claims of daughters to their father's estate. A *nirdhun* (unendowed) daughter has preference over a *sadhun* (endowed) daughter. **Bakubai v. Manohabai**, 2 Bom., 5, followed. **POLI v. NAROTUM BAPU**
[6 Bom., A. C., 183]

139. ————— *Right of succession of daughters to father's estate.*—*Held* that comparative poverty is the only criterion for settling the claims of daughters on their father's estate. **Bakubai v. Manohabai**, 2 Bom., 5; and **Poli v.**

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Daughters—continued.**

Narotum Bapu, 6 Bom., A. C., 188, followed. Where, therefore, two of four daughters brought suits claiming each a moiety of their father's estate, to the exclusion of the two remaining daughters, and such remaining daughters resisted such suits on the ground that they were entitled to the whole estate, being poor and needy, while their sisters were rich, and it was found that such remaining daughters were, as compared with their sisters, poor and needy, the Court dismissed such suits. *AUDH KUMARI v. CHANDRA DAI* **I L. R., 2 All., 561**

140. ——— *Mitakshara, oh. I, c. 8, v. 11, and oh. II, s. 9, v. 13.—Daughter's right of succession to father's estate.—Meaning of "unprovided" for.*—The estate of a deceased Hindu governed by the law of the Mitakshara, was in the possession of one of his daughters, who was in poor circumstances. His other daughter, who was well off and possessed of property, claimed to share in such estate, contending, with reference to the law of the Mitakshara, that, as no provision had been made for her by her father, she was "unprovided" for, within the meaning of that law, and therefore entitled to share in such estate. *Held* that such expression must be construed irrespective of the sources of provision or non-provision. *DANNO v. DARBO* [I L. R., 4 All., 243]

141. ——— *Married daughters.*—Married daughters are not excluded from succession by either the Dyabhaga or Mitakshara. *BEKODE KOOMAREN DEBEE v. PURDHAN GOPAL SAHEE* **2 W. R., 176**

142. ——— *Widow.*—A Hindu, an inhabitant of Bombay, entitled to separate moveable and immoveable property, died without male issue, leaving a widow, four daughters, and brother, and the male issue of other deceased brothers. *Held* that the widow was entitled to the moveable property absolutely, and to the immoveable property for life. Subject to the widow's interest the immoveable property descended to the daughters absolutely, in preference to the brother and the issue of the deceased brothers. *PRANJIVANDAS TULSIDAS v. DEVKUVAERBHAI* **1 Bom., 180**

143. ——— *Unmarried daughter.*—*Subsequent marriage and issue.*—According to the Hindu law current in Bengal, in default of son, grandson, great-grandson, or widow, the unmarried daughter succeeds in preference to married daughters; and if the unmarried daughter should subsequently marry and die leaving male issue, her son will succeed to the exclusion of the married sisters and their male issue. *RADHA KISHEN MANJEE v. RAM MUNDUL* **6 W. R., 147**

144. ——— *Dancing girls, Property left by.—Sister.*—By Hindu law, on the death of one of two sisters to whom the joint hereditary

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Daughters—continued.**

office of dancing girls attached to a pagoda had passed on the death of their mother, the share of the deceased sister in the office devolves on her daughter, and not on the surviving sister by survivorship. *KAMAKSHI v. NAGARATHNAM* **5 Mad., 161**

145. ——— *Daughter's estate.—Stridhan.—Jain law.—Mitakshara.*—Under the Mitakshara law the estate which a daughter takes in property inherited by her father is only a qualified estate, and on her death such property descends to the heirs of her father, and not to her own heirs. *CHOTAY LALL v. CHUNNOO LALL* [12 B. L. R., 235: 29 W. R., 490]

S. C. on appeal to Privy Council
[I L. R., 4 Calc., 744: I L. R., 6 I. A., 15
3 C. L. R., 435]

146. ——— *Daughter, Alienation by.*—A daughter inheriting property from her father takes a life interest only in such property, and has no power of alienation beyond her lifetime. The heir of the father on her death takes the property as heir of the ancestor, and not as her heir. *DEO PRESHAD v. LUJOO ROY* [14 B. L. R., 245, note: 20 W. R., 102]

147. ——— *Mitakshara law.*—Under the Mitakshara law the unmarried daughter succeeds only in priority of her married sisters, not to the ultimate exclusion of such sisters' right of inheritance from their father. Therefore, where a Hindu under the Mitakshara died leaving two daughters, one married and the other unmarried, and the latter succeeded to the father's estate, and then married and subsequently died, leaving a son and her sister her surviving—*Held*, that the sister was entitled to the property as the next heir of the father. *DOWLAT KOORE v. BURMADRO SAHOY* [14 B. L. R., 246, note: 22 W. R., 54]

148. ——— *Succession by daughter before her marriage.—Subsequent marriage and birth of son.—Death of such daughter.—Succession of married sister.*—On the death of a daughter, who had succeeded before her marriage to her father's estate, to the exclusion of her married sister, the estate so inherited by her devolves upon her married sister, who has, or is likely to have, male issue, and not upon her own son. *TINUMONI DAS v. NIBARUN CHUNDER GUPTA* [I L. R., 9 Calc., 154: 12 C. L. R., 376]

149. ——— *Daughter's power of alienation.*—Under the Hindu law, a daughter who succeeds to an absolute and several estate in her father's immoveable property may, if she has no issue, make a gift of that property in her lifetime or devise it by will, and her devisee is entitled to hold it against her own heirs or the heirs of her father. *HABIBHAT v. DAMODARBHAT* [I L. R., 3 Bom., 171]

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Daughters—continued.**

150. ——— *Daughter's power of alienation.*—According to the law of the Presidency of Bombay, the daughter of a Hindu dying without male issue takes absolutely, and may alienate lands by deed, or devise them by will. **BABAJI v. BALAJI GANESH . I. L. R., 5 Bom., 660**

151. ——— *Daughter's right of survivorship.—Joint estate.—Widows.—Difference in the law of Bombay and the other Presidencies.*—In those parts of the Presidency of Bombay where the doctrines of the Mayukha prevail, daughters take not only absolute but several estates, and, consequently, when without any issue, may dispose of such property during life, or may devise it by will. The rule is different in Bengal and Madras, where daughters take by inheritance a joint estate with rights of survivorship. Result of the application of the Bombay rule to widows stated. **BULAKIDAS v. KESHAYLAL . I. L. R., 6 Bom., 85**

152. ——— *Childless daughter.—Joint estate.—Survivorship.*—*E.*, holding estates in Bengal jointly with his brothers as an undivided Hindu family, died, leaving a widow, *S.*, and three unmarried daughters, *B.*, *S. M.*, and *N.* On her husband's death *S.* continued to reside with his brothers, and was supported out of the income of the joint estate. All the daughters married during the lifetime of *S.*, and *B.* became a widow without having had a child. After *S.*'s death, and during the lifetime of *S. M.*, *N.* also became a childless widow. *S. M.* died after her mother, leaving a son *R. K.* *R. K.*, on attaining majority, sued to recover, with means profits, a four-anna share of the ancestral estates to which he claimed to be entitled on his mother's death as heir of *E.*, and from which he alleged he had been dispossessed by the representatives of *E.*'s brothers, whom he made defendants in the suit, joining *B.* and *N.* with them as co-defendants. Held that *B.*, being a childless widow at the time of her mother's death, could take no interest in her father's estate. Held also that, on their mother's death, *S. M.* and *N.*, as heirs of their father, took a joint estate in his succession, and on *S. M.*'s death, the estate which had come to her and *N.* jointly, survived to *N.*, since the fact of the latter being at that time a childless widow did not destroy the right of survivorship which she had previously acquired by inheritance. **AMRITOLALL BOSE v. RAJONIKANT MITTER . 15 B. L. R., 10: 23 W. R., 214 [L. R., 2 I. A., 113]**

153. ——— *Right of daughter's son to maternal grandfather's estate.—Reversioners.*—So long as a daughter not disqualified, or in whom a right of inheritance has once vested, survives, a daughter's son acquires no right by inheritance in his maternal grandfather's estate. **Amritolall Bose v. Rajonikant Mitter, 15 B. L. R., 10, followed.** Where, therefore, *E.* died leaving issue two daughters,

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Daughters—continued.**

ters, *B.* and *P.*, and *P.* died shortly after *E.*, leaving sons, and while *B.* was alive, her sons and the sons of *P.* sued as the heirs of *E.* to set aside a mortgage of his real estate made by *B.* as the guardian of her minor sons, and by *A.*, the father of *P.*'s sons, as their father and guardian, such suit was held not to be maintainable. **BALI NATH v. MAHABIR [I. L. R., 1 All., 608]**

154. ——— *Daughter-in-law.—Succession to mother-in-law.*—A daughter-in-law is not the heiress of her mother-in-law according to Hindu law. **BANDAM SETTAN v. BANDAM MAHA LAKSHMY [4 Mad., 180]**

155. ——— *Priority of, to a paternal first cousin.*—A Hindu widow, who had inherited the estate of her separated husband, died leaving her surviving a widowed daughter-in-law and a first cousin of her deceased husband, i.e., his paternal uncle's son. In a suit brought by the daughter-in-law to recover possession of certain immoveable property left by the deceased widow, Held that in the Presidency of Bombay the daughter-in-law was entitled to succeed to the property in priority to the paternal first cousin of her deceased husband. **VITHALDAS MANICKDAS v. JESKUBAI [I. L. R., 4 Bom., 219]**

156. ——— *Mitakshara law.*—Under the Mitakshara and usages obtaining in the district of Behar, a daughter-in-law, whose husband has predeceased his father, is not in the line of heirs of her father-in-law. *Per MITTER, J.*—A daughter-in-law, not being a joint owner with her father-in-law, cannot after his death take his estate by right of survivorship. **ANANDA BIBI v. NOWNIT LAL . I. L. R., 9 Cal., 315**

157. ——— *Granddaughter.—Mitakshara law.*—According to Mitakshara law a son's daughter does not inherit. **KOOMUD CHUNDER ROY v. SENTAKUNT ROY . W. R., F. B., 75**

158. ——— *Mother.*—By Hindu law the mother is a possible heir under certain circumstances. **TARA SOONPURNE v. RASH MUNJURNE [12 W. R., 78]**

159. ——— *Mother's inheritance from son.*—According to Hindu law, a mother inheriting from her son has not an absolute property in the estate, but merely a life interest, without power of alienation. **BACHIRAJU v. VENKATAPPA [2 Mad., 402]**

160. ——— *Widowed mother's estate as heir of son.*—Held that in a separate family, a Hindu mother succeeding to her son's immoveable property takes in it the same estate as a Hindu widow takes in the immoveable property of her husband dying without male issue. A Hindu died, leaving by

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Mother—continued.**

his first wife, who predeceased him, three sons, from whom he had separated, his second wife, and a minor son by the latter. The minor son died in infancy. *Held* that the mother succeeded to the immoveable property of her minor son, but took only a life interest in it. **NARSAPPA LINGAPPA v. SAKHARAM KRISHNA** [6 Bom., A. C., 215]

161. ———— Niece.—Sister's daughter.—Appointed daughter.—According to Hindu law, a sister's daughter cannot become an "appointed daughter" nor her son a "putrika putra," nor is the adoption of a "putrika putra" valid in the present day. **NURSING NARAIN v. BHUTUN LALL** [W. R., 1864, 194]

162. ———— Sisters.—Mitakshara law.—According to the law of the Mitakshara none but females expressly named can inherit, and the sister of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate. **Gawri Sakai v. Bakto, I. L. R., 3 All., 45**, followed. **JAGAT NARAIN v. SHERO DAS** . . . I. L. R., 5 All., 311

163. ———— Sister's daughter.—According to Hindu law, neither a sister nor a sister's daughter can inherit. **KALI PERSHAD SURMA v. BHORABEE DABEE** . . . 2 W. R., 180

ANUND CHUNDER MOOKERJEE v. THEETORAM CHATTERJEA . . . 5 W. R., 215

164. ———— Mitakshara law.—*Male gotraja sapindas.*—According to the Mitakshara law a sister is not in the line of heirs, and is not entitled to succeed in preference to male gotraja sapindas. **JULLESSUR KOOR v. UGGUR ROY** [I. L. R., 9 Cal., 725; 12 C. L. R., 460]

165. ———— Brother.—A sister cannot succeed her brother as heir by Hindu law. **RUKMINI DAS v. KADERNATH GHOSH** [5 B. L. R., Ap., 87]

RAMDYAL DEB v. MAGNE . . . 1 W. R., 227

ANUND CHUNDER MOOKERJEE v. THEETORAM CHATTERJEA . . . 5 W. R., 214

166. ———— Law of Bombay.—*Sons of separated brother.*—A Hindu, an inhabitant of Bombay, entitled to separately acquired moveable and immoveable property, died, leaving a widow, an infant son, three daughters, and a brother. The son died in infancy, and without having married. *Held* that the widow as mother of the son inherited his property, as to the moveables absolutely, as to the immoveables for life, with remainder to the sisters of the son as his heirs absolutely; and that as against the defendants (the widow and daughters) the plaintiffs as sons of a separated brother had by Hindu law no claim as heirs to any part of the property, according to the law in the Bombay Presidency. In a separated family, sisters take as heirs to an unmarried

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Sisters—continued.**

and intestate brother in preference to relations of the father. Marriage does not exclude them from the inheritance. **VINAYAK ANANDRAV v. LAKSHMIBAI** [1 Bom., 117]

On appeal to the Privy Council

[3 W. R., P. C., 41; 9 Moore's I. A., 516]

167. ———— Law of Western India.—Viramitrodaya.—Under the Hindu law prevailing in Western India, a sister succeeds to the estate of her deceased brother in preference to a separated and remote male relative of the deceased. The *Viramitrodaya* is an authority in Benares rather than in Bombay, and its doctrine—that, where there has been an intervening holder between a brother and sister or a father and daughter, the inheritance opens, and the sister and daughter are excluded, and the next male heirs come in—has not been followed in this Presidency. **DHONDU GURAY v. GANGABAI** [I. L. R., 3 Bom., 369]

168. ———— Cousin on paternal side once removed.—Under the Hindu law, a sister succeeds as heir to the estate of her deceased brother, in preference to his cousin on the paternal side one degree removed. **Krishnaji v. Pandurang, 12 Bom., 66**, referred to and distinguished. **BREU v. KHANDU** [I. L. R., 4 Bom., 214]

169. ———— Sister's right of succession in preference to stepmother or paternal first cousin.—Under the Hindu law, as prevailing in the Presidency of Bombay, a full-sister is the heir of her deceased brother, in preference either to his stepmother or paternal first cousin. **Vinayak Anandrav v. Lakshmbai, 1 Bom., 117; 3 W. R., P. C., 41; 9 Moore's I. A., 516; Shakharam Sadashiv Adhikari v. Sitabhai, I. L. R., 3 Bom., 353**, followed. **LAKSHMI v. DADA NANAJI** [I. L. R., 4 Bom., 210]

170. ———— Sisters, endowed and unendowed, Equal right of.—Hindu sisters when they succeed take equally. An unendowed sister has no prior right of succession over an endowed sister, such as an unendowed daughter has over an endowed daughter. **BHAGIETHIBAI v. BAYA** [I. L. R., 5 Bom., 264]

171. ———— Right of sister to inherit in preference to half-brother.—Estate taken by a mother in her son's immoveable property.—Mitakshara and Mayukha, Authority of.—A Hindu died possessed of certain immoveable property situated in the district of Thana, in the Northern Konkan, leaving him surviving a mother, a full-sister, and a separated half-brother. His mother succeeded to his estate, and held it till her death. The half-brother then sued for a declaration of his right to the estate of his deceased brother. *Held* that the full-sister and not the half-brother was entitled to succeed as heir to the estate of her deceased brother. *Held*, also,

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Sisters—continued.**

that the decision in *Vinayak Anand Rao v. Lakshmi-bai*, 1 Bom., 117; 9 Moore's I. A., 516, must be regarded as of general authority in the Presidency of Bombay, except where an invariable and ancient special usage to the contrary is alleged and proved. *Seemle*.—The law of the Mayukha should prevail in the Northern Konkan. *Krishnaji v. Pandurang*, 12 Bom., 65, and *Lallubhai Babubhai v. Mankubhai*, I. L. R., 2 Bom., 418, referred to. It is settled law that a mother succeeding, on the death of her son, to his immoveable property, takes only such a limited estate in it as a Hindu widow takes in the immoveable property of her husband dying without male issue, and that, on her death, her son's heir succeeds to such property. *SAKHARAM SADASHIV ADHIKARI v. SITABAI* . . . I. L. R., 8 Bom., 353

172. ————— A sister may succeed to her brother and sue for the recovery of property unlawfully alienated by their mother which the latter inherited on the death of her son. *KUTTI AMMAL v. RADAKRISHNA AIYAN* . 8 Mad., 88

173. ————— *Priority of sister and half-sister*.—In the Presidency of Bombay the sister and half-sister inherit in priority to the stepmother as well as to the brother's wife and the paternal uncle's widow. The law as to the succession of a full-sister in the Presidency of Bombay does not rest solely upon either the Mitakshara or the Mayukha, but is built upon both taken conjointly. The case of *Vinayak Anand Rao v. Lakshmi-bai*, 1 Bom., 117; 9 Moore's I. A., 516, decided that in the Presidency of Bombay the term "brothers" occurring in the Mitakshara (chapter II, section 14, pl. i), should be taken to include sisters. As the term "brothers" while including sisters introduces them after brothers, so the term "half-brothers" must be regarded as including half-sisters and as bringing them in after half-brothers. *KESHERBAI v. VALAB RAOJI* [I. L. R., 4 Bom., 168]

174. ————— *Half-sister*.—*Sapinda*.—In competition with a sapinda of the deceased a half-sister cannot succeed according to the Mitakshara. *KUMARAVELU v. VIRANA GOUNDAN* [I. L. R., 5 Mad., 29]

MOTHOORANATH MOZOOMDAR v. EUSUFF ALI KHAN . . . 14 W. R., 356

175. ————— *Stepmother*.—"Mother".—*Mitakshara*.—*Law in Bombay*.—The stepmother is not included by the Mitakshara within the term "mother." But, although a stepmother cannot in the Presidency of Bombay be introduced as an heir under the term "mother," yet, as the widow of a gotraja sapinda of the *propositus*, and therefore, according to the doctrine of the Mitakshara and the Mayukha, a gotraja sapinda herself, she cannot be regarded as altogether excluded from the succession to a stepson. *Query*.—At what points in the list of heirs the step-

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Stepmother—continued.**

mother, the brother's wife, and the paternal uncle's wife succeed in the Presidency of Bombay. *KESHERBAI v. VALAB RAOJI* . I. L. R., 4 Bom., 168

176. ————— *Paternal uncle*. Under the Hindu law which obtains in the Presidency of Madras, a stepmother does not succeed to the estate of her stepson in preference to a paternal uncle. *Kumaravelu v. Virana Goundan*, I. L. R., 5 Mad., 29; and *Muttammal v. Venga Lakshmi Ammal*, I. L. R., 5 Mad., 82, approved. *MARI v. CHINNAMMAL* [I. L. R., 8 Mad., 107]

177. ————— *Sagotra sapinda*.—According to Hindu law current in the Madras Presidency, a stepmother does not succeed to the estate of her stepson in preference to his grandfather's brother's grandson. *RAMASAMI v. NARASAMA* [I. L. R., 8 Mad., 133]

178. ————— *Sapinda*.—*Mitakshara law*.—In competition with a sapinda of the deceased, a stepmother cannot succeed according to the Mitakshara. *KUMARAVELU v. VIRANA GOUNDAN* . . . I. L. R., 5 Mad., 29

179. ————— *Paternal grandmother*.—A Hindu stepmother is not entitled to succeed to a deceased stepson before a paternal grandmother. *MUTTAMAL v. VENGALAKSHMI* [I. L. R., 5 Mad., 32]

180. ————— *Stepmother and step-grandmother*.—*Mitakshara law*.—According to the Mitakshara, in a divided family, a stepmother cannot succeed to the estate of her stepson, or a step-grandmother to the estate of her step-grandson. *LALA JOTI LAL v. DURANI KOWER*. *LAL KOWER v. JAIKARAN LAL* [B. I. R., Sup. Vol., 67: W. R., F. R., 173]

181. ————— *Widow*.—*Heir on exhaustion of all specified heirs*.—The members of the "compact series" of heirs specifically enumerated take in the order of enumeration preferably to those lower in the list, and to the widows of any relatives whether near or remote, but where the group of specified heirs has been exhausted, the right of the widow is recognised to take her husband's place in competition with the representative of a remoter line. *NAHALCHAND HARAKCHAND v. HEMCHAND* . I. L. R., 9 Bom., 31

182. ————— *Brother of husband*.—According to the Dayabhaga, a Hindu widow is the heiress of her husband in preference to his brother. *CHUNDER KANT SUMAN v. BUNDEE DES SUMAN* . . . 6 W. R., 61

183. ————— *Right to succeed to family property*.—A Hindu widow's right to succeed to her husband's ancestral undivided property is only as his immediate heir. A widow can only inherit family property where there has been

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Widow—continued.**

a partition among the coparceners, of whom her husband was one, or where the whole property has vested in her husband by the death of all the other coparceners. The widow of an undivided Hindu, who leaves a coparcener him surviving, has, like the widow of a divided Hindu who leaves male issue, merely a right to maintenance. Where, therefore, a widow sued for a Palaiyappattu as heir to the surviving brother of her husband,—*Held* that the suit must be dismissed. **PRDDAMUTTU VIRAMANI v. APPU RAU** . . . 2 Mad., 117

184. ————— *Daughters.*—A Hindu widow, whether childless or not, stands next in the order of succession on failure of male issue. Where *A.* had two wives, *B.* and *C.*, and *B.* predeceased *A.*, leaving three daughters, and *C.* survived *A.* and was childless,—*Held* that *C.* succeeded to *A.*'s property in preference to the three daughters. **PERAMMAL v. VENKATAMMAL** . . . 1 Mad., 223

185. ————— *Estate of husband's brother.*—*Held* that under Hindu law a widow was not entitled to inherit the estate of her husband's brother, and she, having no *locus standi* in Court, could not question the title of the party in possession of the disputed estate. **CHOORA v. BUSUNTEE** [1 Agra, 174

186. ————— *Estate of husband's uncle.*—*Held* that a widow cannot, under Hindu law, claim to inherit the estate left by her husband's uncle, and could not consequently question the title of the defendant (widow of another brother's son), who was admittedly in possession of the estate claimed. **GOVERN v. OOMRAO KOONWAR** [1 Agra, 149

187. ————— *Sonless widow.*—*Jain law.*—A sonless widow of a Saraogi Agarwala takes, by the custom of the sect, an absolute interest in the self-acquired property of her husband. **SHEO SINGH RAI v. DAKHO** . . . 6 N. W., 362

Affirmed by Privy Council in S. C.

[I. L. R., 1 All., 688

188. ————— *Khojas.—Sister.*—The widow of a Khoja Mahomedan who has died childless and intestate succeeds to her husband's estate in preference to his sister. **RAHIMATBAI v. HIRBAI** . . . I. L. R., 3 Bom., 34

189. ————— *Husband's brother.—Mitakshara law.*—Where the Mitakshara law prevails, the widow of a member of a joint Hindu family cannot succeed to her husband in preference to the husband's brother, and is no heir to her brother-in-law, or to his widow after their death. **BANKEE PERSHAD v. MAHABOODHY** . . . 7 W. R., 292

190. ————— *Property acquired by funds derived from ancestral estate.*—Where property is acquired by the members of a

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Widow—continued.**

joint Hindu family from funds derived from the ancestral property and held by them in joint possession, on the death of one of them his share does not devolve on his widow. **TEENNOO v. MOONIAH**

[7 W. R., 440

191. ————— *Separate estate of husband.*—In the case of property, of which part is the common property of a joint Hindu family, and part the separate acquisition of a deceased brother, his widow, in default of male issue, succeeds to his separate estate. **KATTAMA NAUCHEAR v. RAJAH OF SHIVAGUNGAR** [2 W. R., P. C., 31: 9 Moore's I. A., 539

192. ————— *Right of, to succeed to husband's share of partnership property.*—Ordinary copartnership property is not subject to the rule of Hindu law which excludes a widow from the succession at her husband's death to a share of the joint property of an undivided family. **RAM-PERSHAD TEWARRY v. SHEO CHURN DOSS. THOOKRA v. RAM-PERSHAD TEWARRY** 10 Moore's I. A., 490

193. ————— *Wives of got-raja sapindas.—Law of Western India.*—According to the Hindu law obtaining in Western India, the wives of all gotraja sapindas and samonadakas have rights of inheritance co-extensive with those of their husbands immediately after whom they succeed. **LAKSHMIBAI v. JAYRAM HARI** . . . 6 Bom., A. C., 152

194. ————— *Right of survivorship.*—The canon of the Hindu law of Northern India, in regard to the succession of widows, is "that a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his co-heirs and not subsequently re-united with them, dies leaving no male issue." The limit of the "co-heirs" must be held to include undivided collateral relations, who are descendants in the male line of one who was a coparcener with an ancestor of the last possessor. Collateral kinsmen answering the above description have interests which pass *inter se* by right of survivorship, and a widow's right as heir is excluded by the test when any of such collateral kinsmen survive her husband. The governing principle of the rule is coparcenary survivorship, which precludes alike the right of the widow and every other member of the family, who has no right to the enjoyment of the estate before the death of the possessor. **YENUMULA GAYU-RIDEVAMMA GARU v. YENUMULA RAMANDORA GARU** [6 Mad., 93

195. ————— *Sapindas.—Law in Bombay.*—In the Presidency and Island of Bombay the wife is a sapinda as well as a gotraja of her husband, and, if he die (without leaving a son or grandson), she, on the subsequent death of his separated sapinda, and in the absence of any specially designated heir entitled to preference, ranks in the same place in the order of succession to the property

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued:****Widow—continued.**

of such separated sapinda as her husband would have occupied if he were living. Thus the widow of first cousin *ex parte paterna* of the deceased *propositus* was held prior in order of succession to a fifth male cousin *ex parte paterna* of the same. Or, in other words, a wife becomes by her marriage a sagotra sapinda of her husband and his gotraja sapindas, and in that capacity succeeds as a widow to property which he would have taken as a sapinda before the male representative of a remoter branch. The Institutes of Manu, the Mitakshara, and the Mayukha, although of great authority in the Presidency of Bombay, are all subject to the control of law and usage. No one of them is, as a whole, in full force in any part of the Presidency. In all of them there are precepts which, if they ever were practical law, have, for a time beyond the memory of living men, been obsolete.

LALUBHAI BAPUBHAI v. MANKUVABHAI

[I. L. R., 2 Bom., 398]

In the same case on appeal it was held by the Privy Council.—By the Hindu law in force in Western India the widow of a collateral relation, although she is not specified in the texts amongst the heirs to members of her husband's family, may come into the succession as one of the classes of gotraja sapindas of that family. According to the law of the Mitakshara, as accepted in Western India, the right to inherit in the classes of gotraja sapindas is to be determined by family relationship, or the community of corporal particles, and not only by the capacity of performing funeral rites. The High Court having affirmed as a right, according to the law actually prevalent in Western India, the claim of a widow of a first cousin, on the father's side, of the deceased to inherit his estate as a gotraja sapinda, it was held that there was no reason for withholding from that doctrine the force of law; the right of the widow being mainly rested on the ground of positive acceptance and usage. In this case the widow of a first cousin of the deceased, on the father's side, was held to have become by her marriage gotraja sapinda of her husband's cousin's family, and to have a title to succeed to the estate of that cousin on his decease, in priority to male collateral gotraja sapindas, who were seventh in descent from an ancestor common to them and to the deceased, who was sixth from that common ancestor.

LALUBHAI BAPUBHAI v. CASSIBAI

[I. L. R., 5 Bom., 110; 7 C. L. R., 445]

L. R., 7 I. A., 212

196. ————— *Succession of co-widows.*—Where a Hindu dies intestate, leaving no issue and several widows, the widows succeed equally, and are entitled to equal shares in his estate, and the ordinary course would be to grant them a joint administration. *RAMIA v. BHAGI* . 1 Bom., 66

S. C. IN THE GOODS OF DADOO MANIA

[1 Ind. Jur., O. S. 59]

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued:****Widow—continued.**

197. ————— *Right of co-widows.*—*Right of senior widow.*—According to Hindu law current in Southern India, two or more lawfully married wives (patnis) take a joint estate for life in their husband's property with rights of survivorship and equal beneficial enjoyment. The position of senior widow gives her, as in the case of other coparceners, a preferable claim to the care and management of the joint property. *JIJOTIAMBIA BAYI SAIBA v. KAMAKSHI BAYI SAIBA*. BAYI SAIBA v. JIJOTIAMBIA BAYI SAIBA . . . 3 Mad., 424

198. ————— *Survivor of joint widows.*—*Grandson of deceased widow.*—A Hindu died, leaving no son but two widows, K. and E. A dispute having arisen, K. brought a suit against E. and obtained a decree dividing equally between them the lands of the deceased husband. K. took possession of her moiety and held the same till her death, when E. took possession. In a suit by the sons of the deceased daughter of K. against E. for the share formerly held by K.,—*Held* that they were not entitled in preference to E., the surviving widow. *RINDAMMA v. VENKATARAMAPPA* [8 Mad., 298]

199. ————— *Co-widows.*—*Joint tenants for life.*—According to the Hindu law of inheritance the separate property of a person dying without male issue, and leaving more than one widow, is taken by all the widows as a joint estate for life, with rights of equal beneficial enjoyment and of survivorship. The view that, according to the custom prevailing in Southern India, the senior widow by date of marriage succeeds in the first instance, the others inheriting in their turn as they survive, but being only entitled in the meantime to be maintained by the first, is not supported by the decisions of the Courts, nor by the sanction of any text-writer of paramount authority in the Madras Presidency. *GAJAPATHI NILAMANI v. GAJAPATHI RADHAMANI*

[I. L. R., 1 Mad., 290; 1 C. L. R., 97]

L. R., 4 I. A., 212

200. ————— By Hindu law two widows of one and the same husband take a joint interest in one undivided estate, and although the widows may arrange for the enjoyment of the estate in separate portions, there can be no compulsory partition converting the joint estate into an estate in severalty. *Sembie*.—The interest of one of two such widows cannot be sold. *Jijotiamba Bai v. Kamakshi Bai*, 8 Mad., 424; *Rindamma v. Venkataramappa*, 8 Mad., 263; *Nilamani v. Radhamani*, I. L. R., 1, Mad., 290; and *Bhugmandeen Doobey v. Myna Bae*, 11 Moore's I. A., 487, followed. *KATHAPERUMAL v. VENKABAI*

[I. L. R., 2 Mad., 194]

201. ————— *Co-heirs.*—*Right of survivorship.*—Under the Mitakshara law,

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Widow—continued.**

an unseparated grandfather's great-grandson's grandson will exclude a widow from inheriting the estate of her husband. *Yenumula Gauridevamma Garu v. Yenumula Ramandora Garu*, 6 Mad., 93; and *Naraguntly Lutchmee Davamah v. Vengama Naidoo*, 9 Moore's I. A., 66, cited. *RATAN DABEE v. MODHOOSOODDUN MOHAPATOR* . . . 2 C. L. R., 328

202. ————— *Mitakshara law.*—Estate inherited by two Hindu widows from deceased husband.—Alienation by one widow.—When their Lordships of the Privy Council have seen fit to place a definite construction upon any point of Hindu law, the High Court is bound by such construction until such time as their Lordships may think fit to vary the same. According to the *Mitakshara* law, the estate which two Hindu widows take by inheritance from their deceased husband is not several but joint. The senior of two such Hindu widows is not a manager of such estate, and competent, for purposes of legal necessity, to alienate it, without the consent of the other. *Bhugwandeon Doobey v. Myna Base*, 11 Moore's I. A., 487; and *Gajapathi Nilamani v. Gajapathi Radhamani*, I. L. R., 1 Mad., 290, referred to. *RAM PRYABI v. MULCHAND* . . . I. L. R., 7 All., 114

203. ————— *Son's widow.*—Grandson's widow.—A Hindu died leaving him surviving a daughter-in-law and a grandson (the widow and son of a predeceased son). Subsequently his grandson died a minor, leaving his widow (also a minor) him surviving. Held that the grandson's widow succeeded in preference to the son's widow, according to the rule of obstructed heritage, the latter being entitled to maintenance out of the family property. *BAI AMRIT v. BAI MANIK*

[12 Bom., 79]

204. ————— *Widow of paternal uncle.*—Nephew.—The widow of a paternal uncle is, according to Hindu law, no heir to her nephew. *UPENDRA MOHAN TAGORE v. THANDA DAS*

[8 B. L. R., A. C., 849]

S. C. WOOPENDRO MOHUN TAGORE v. THANDA DOSSIA . . . 12 W. R., 263

205. ————— *Widow of paternal uncle.*—*Mitakshara law.*—Females.—According to *Mitakshara* law, none but females expressly named can inherit, and the widow of the paternal uncle of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate. *GAURI SAHAI v. RUKKO* . . . I. L. R., 3 All., 45

206. ————— *Succession on death of adopted son.*—On the death of a son adopted by a Hindu as the son of one of his two wives, the property descends (the adoptive mother having died before the son) not to the other wife, but to the

HINDU LAW — INHERITANCE — continued.**8. SPECIAL HEIRS—continued.****(b) FEMALES—GENERAL RULES—continued.****Widow—continued.**

next legal heir. *KASHESHUBH DEBIA v. GRESH CHUNDER LAHOREE* . . . W. R., 1864, 71

207. ————— *Succession on death of adopted son.*—If the adoptive mother survives an adopted son before he attains majority, she has a life interest in the property of her husband. *SOONDER KOOMAREE DEBIA v. GUDHADUR PERSHAD TIWARRH* [4 W. R., P. C., 118; 7 Moore's I. A., 54]

208. ————— *Son validly adopted.*—In a case where a valid adoption makes the adopted son the legal heir, the widow has no right but that of maintenance. *RUTNA DOBANI v. PUR-LADH DOBNEY* . . . 7 W. R., 450

9. CHILDREN BY DIFFERENT WIVES.

209. ————— *Children by different mothers of same caste.*—The Hindu law of inheritance makes no distinction between the legitimate children of mothers of the same caste. *NUGEN-DUR NARAIN v. RUGHOOONATH NARAIN DEY*

[W. R., 1864, 20]

210. ————— *Sons by different mothers.*—*Priority in time of marriage.*—*Primogeniture.*—As regards the rights of sons by different wives to inherit, whether in coparcenary or as sole heir (except, perhaps, the son of the first wife), the priority in point of time of their mothers' marriages has never been regarded when the wives were equal in caste and rank, and the rule of primogeniture was and is the same in the case of sons of several wives of equal caste and rank as in the case of sons by one. *SIVANANANJA PERUMAL SETHURAYER v. MUTTU RAMALINGA SETHURAYER. ATHILAKSHMI AMMAL v. SIVANANANJA PERUMAL SETHURAYER*

[3 Mad., 75]

Affirmed by the Privy Council in *RAMALAKSHMI AMMAL v. SIVANANANTHA PERUMAL SETHURAYER*

[12 B. L. R., 396; 17 W. R., 553]

14 Moore's I. A., 570

10. ILLEGITIMATE CHILDREN.

211. ————— *Illegitimate children.*—*Issue of illegal intercourse.*—Illegitimate sons are excluded by the Hindu law from inheriting when the intercourse between their parents was in violation of, or forbidden by, law. *VENKATACHELLA CHETTY v. PARVATHAM* . . . 8 Mad., 134

212. ————— *Maintenance.*—*Right to.*—*Sudras.*—*Issue of Pat marriage.*—The general result of the authorities, both juridical and forensic, is that among the three regenerate classes of Hindus (Brahmans, Kshatriyas, and Vaishyas) illegitimate children are entitled to maintenance, but cannot inherit, unless there be local usage to the contrary; and that, among the Sudra class, illegitimate children, in certain cases at least, do inherit.

HINDU LAW — INHERITANCE — continued.**10. ILLEGITIMATE CHILDREN—continued.****Illegitimate children—continued.**

The extent to which this right exists considered, and the texts of Hindu law books bearing on the point referred to. According to Vijnyaneshvara, the author of the Mitakshara (Chapter I, section 12), the father of an illegitimate son by a Dasi among Sudras may in his (the father's) lifetime allot to such son a share equal to that of a legitimate son, and, if the father die without making such allotment, the illegitimate son by the Dasi is entitled to half the share of a legitimate son, and, if there be no legitimate son, and no legitimate daughter or son of such a daughter, the illegitimate son by the Dasi takes the whole estate. If, however, there be a legitimate daughter, or legitimate son of such a daughter, the illegitimate son would take only half of the share of a legitimate son, and such daughter or daughter's son would take the residue of the property, subject to the charge of maintaining the widow of the deceased proprietor. The dictum of LORD CAIRNS in *Gajapathi Radhika v. Gajapathi Nilamant*, 18 Moore's I. A., 497; S. C., 6 B. L. R., 202; 14 W. R., P. C., 33, reversing 2 Mad. 369—"Supposing the sons, or either of them, to have been legitimate, the widow (of Padmanabha) could have been entitled to maintenance only. Had both the sons been illegitimate, their claims, unless some special custom governed the case, which is not in proof, would have been to maintenance only. In this last-named case the widow would have had the ordinary estate of a Hindu widow,"—commented upon and explained. The terms Dasi and Dasiputra, as defined by various writers on Hindu law, discussed, and the rights by inheritance of a Dasiputra considered. The condition that, in order to entitle the illegitimate offspring of a Sudra woman by a Sudra to inherit the property of the latter, or share in it, she should, according to Jimuta Vahana and Nilkantha, be an unmarried woman, has, in practice, been discarded in the Presidency of Bombay. In this Presidency the illegitimate offspring of a kept woman, or continuous concubine, amongst Sudras are on the same level as to inheritance as the issue of a female slave by a Sudra. *G.*, a Sudra woman, was married to *T.*, also a Sudra, by Pat marriage, without having received a *chhor chiti* (release) from her first husband, who was then living, or obtained any other sanction of her Pat with *T.* Held that the intercourse between *G.* and *T.* was adulterous, and that, therefore, the plaintiff, their son, being the result of such intercourse, was not entitled to take as heir even to the extent of half a share, and was not a Dasiputra within the scope of Yajnyavalkya's text, or recognised as such by other commentators. He was, however, held entitled to maintenance, as he had been recognised by *T.* as his son. *RAHI v. GOVINDA WALAD TEJA*. I. L. R., 1 Bom., 97

213. ————— *Sudras.*—In the case of Sudras the law has been and still is that illegitimate sons succeed their fathers by right of inheritance. *PANDAIYA TELAYE v. PULI TELAYE* [1 Mad., 478

HINDU LAW — INHERITANCE — continued.**10. ILLEGITIMATE CHILDREN—continued.****Illegitimate children—continued.**

214. ————— *Sons of Sudra.*
—The illegitimate sons of a Sudra are as such entitled to one half of a son's share. *KESHOREE v. SAMARDHAN*. 5 N. W., 94

215. ————— *Sons of Sudra.*
—The illegitimate son of a Sudra being the offspring of an incestuous intercourse (intercourse between a father-in-law and his daughter-in-law), is not entitled to inherit or share in the family property according to Hindu law. *Semble*.—To entitle the illegitimate sons of a Sudra by a Sudra woman to inherit a share in the family property, the intercourse between the parents must have been a continuous one, and the woman must have been an unmarried woman. Therefore, the illegitimate son of a Sudra by a Sudra woman living with him in adultery is not entitled to a share in or to inherit the family property. *DATTI PARISI NAYUDU v. DATTI BANGARU NAYUDU* [4 Mad., 204

216. ————— *Sons of Sudra.*
—*Brother's son.*—*Semble*.—An illegitimate son of a Sudra by his concubine is his heir in preference to a brother's son. *KRISHNAMMA v. PAPA* [4 Mad., 234

217. ————— *Sons of Sudra.*
—The son of a Sudra by a slave-girl is not entitled to share with legitimate sons in the inheritance of an uncle by the father's side. *NISSAR MURTOJAN v. DHUNWUNT ROY*. Marah., 609

218. ————— *Sons of Sudra.*
—According to the doctrines of the Bengal school of Hindu law, a certain description only of illegitimate sons of a Sudra by an unmarried Sudra woman is entitled to inherit the father's property in the absence of legitimate issue, *viz.*, the illegitimate sons of a Sudra by a female slave or a female slave of his slave. *NARAIN DHARA v. RAKHAL GAIN* [I. L. R., 1 Cal., 1: 23 W. R., 334

219. ————— *Mitakshara law.*—*Illegitimate daughters.*—The illegitimate offspring of a kept woman or continuous concubine amongst Sudras are on the same level as to inheritance as the issue of a female slave by a Sudra. Under the Mitakshara law the son of a female slave by a Sudra takes the whole of his father's estate, if there be no sons by a wedded wife, or daughters by such a wife, or sons of such daughters. If there be any such heirs the son of a female slave will participate to the extent of half a share only. *Held*, therefore, that *M.*, the illegitimate son of an Ahir by a continuous concubine of the same caste, took his father's estate in preference to the daughters of a legitimate son of his father who died in the father's lifetime. *SARSUTI v. MANNU* I. L. R., 2 All., 134

220. ————— *Sudras.*—*Right of illegitimate sons.*—*V.* and *S.* were undivided Hindu brothers of the Sudra caste. *V.* died before *S.*, leaving two illegitimate sons by *A.*, an unmarried Sudra

HINDU LAW — INHERITANCE — continued.**10. ILLEGITIMATE CHILDREN—continued.****Illegitimate children—continued.**

woman kept as a continuous concubine. *S.* left two widows. *Held* that although the illegitimate sons of *A.* would be entitled to inherit the estate of *V.*, they could neither exclude the right of survivorship of *S.* nor succeed to the estate of *S.* **KRISHNAYAN v. MUTTUSAMI**. I. L. R., 7 Mad., 407

221. ————— Mitakshara.—

Sudra family.—Dasi-putra or son by a slave-girl.—Right of survivorship.—Illegitimate son.—In a *Sudra* family of the *Mitakshara* school, a *dasi-putra* or illegitimate son by a slave-girl is a coparcener with his legitimate brother in the ancestral estate and will take by survivorship. **JOGENDBO BHUPATI v. NITYANUND MAN SING**. I. L. R., 11 Cal., 702

222. ————— Illegitimate son.

—The illegitimate son of a married woman by a *Gosavi* with whom she is living in adultery while undivorced from her lawful husband cannot inherit his father's property. **NARAYAN BHARTHI v. LAVING BHARTI**. I. L. R., 2 Bom., 140

223. ————— Sudras.—Illegitimate son.—

Held that an *Ahir*, who was the offspring of an adulterous intercourse, was incapable of inheriting his father's property, even as a *Sudra*. **Venkatachella Chetty v. Paranthammal**, 8 Mad., 134; **Parisi Nayudu v. Bangaru Nayudu**, 4 Mad., 204; **Viraramuthi Udayan v. Singaravelu**, I. L. R., 1 Mad., 306; **Rabi v. Govinda**, I. L. R., 1 Bom., 97; and **Narayan Bharti v. Laving Bharti**, I. L. R., 2 Bom., 140, referred to. **DALIP v. GANPAT** [I. L. R., 3 All., 367]

224. ————— Illegitimate son.

—*Estate of Rajpoot.*—An illegitimate son of a *Rajpoot* is not entitled to succeed to the property left by the deceased *Rajpoot*, but the property being divided the mother is entitled to succeed in preference to the nephews who could only sue to protect the property if the mother dealt with it in any manner not authorised by Hindu law. **PUHOOF SINGH v. KHOOMAN** [3 Agra, 313]

225. ————— Khatri class.—

Illegitimate son.—Maintenance.—*Held* that the appellant had failed to establish the alleged marriage of his father with his mother, and that consequently his claim as a legitimate son of the late *Rajah* of *Ramnuggur* could not be sustained; that he was not entitled to inheritance as the illegitimate son of the *Rajah*, because his father, who was a *Rajpoot*, was a *Khatri*, or one of the three regenerate or twice-born races whose illegitimate sons could not inherit; but that he was entitled to maintenance out of his father's estate. **CHUTURYA RUM MURDUN SYN v. PURLUHAD SYN**. 4 W. R., P. C., 132; 7 Moore's I. A., 18

226. ————— Saygi marriage.—

Byahi marriage.—By the custom of a *Hindu* family, no distinction was made between the issue of a *Saygi* marriage and a *Byahi* marriage. *Held* that the issue of the son of a *Saygi* wife first married was

HINDU LAW — INHERITANCE — continued.**10. ILLEGITIMATE CHILDREN—continued.****Illegitimate children—continued.**

entitled to inherit the property of the grandfather, in priority to the issue of a son of a subsequent *Byahi* wife. **RADAIAK GHASERAIN v. BUDAIAK PRESHAD SINGH**. Marsh., 644

227. ————— Joint family

consisting of illegitimate sons of Christian father.—Succession under razeenamah.—Illegitimate sons of a *Christian* father by different *Hindu* women, although by agreement they may constitute themselves parceners in the enjoyment of their property after the manner of a joint *Hindu* family, are not a joint *Hindu* family according to *Hindu* law. On the death of each, his lineal heirs representing their parent would, by the effect of the agreement, enter into that partnership; collaterals, however, not so entering by succession, unless the *Hindu* law gave in such a case a right of inheritance to collaterals. In a partition suit instituted by one of the illegitimate children, a deed of compromise was executed by the parties which provided for the mode of enjoyment and against the sale, mortgage, lease, or security of any separate share. *Held* (1) that these provisions of the deed did not extend to prevent alienation by devise, nor affect the right of inheritance; and (2) that the arrangement between the parties included the right of survivorship, the claim of the State only arising on failure of heirs of the last survivor. **MYNA BOYEN v. OOTTORAM**

[2 W. R., P. C., 4; 8 Moore's I. A., 400]

Varying decision of High Court in **MAYNA BAI v. UTTARAM**. 2 Mad., 196

11. IMPARTIBLE PROPERTY.**228. ————— Impartibility.—Succession to**

raj.—Partibility is the general rule of *Hindu* inheritance, the succession of one heir, as in the case of a *raj*, the exception. **EAST INDIA COMPANY v. KAMACHEN BOYE SARIBA**. 4 W. R., P. C., 42

S. C. SECRETARY OF STATE FOR INDIA v. KAMACHEN BOYE SARIBA. 7 Moore's I. A., 476

229. ————— Primogeniture.—

Succession in consequence of primogeniture amongst Hindus in India seems to be the rule only in the case of large zamindaris and estates which partake of the nature of principalities. **BHUJANGRAV BIN DAVALATRAV GHORPADE v. MALOJIRAV BIN DAVALATRAV GHORPADE**. 5 Bom., A. C., 161

230. ————— Succession to

raj, Nature of.—On the question of the extent to which property of the nature of an impartible *raj* is excepted from the general law by a special rule of succession entitling the eldest of the next of kin to take solely,—*Held* that such a usage does not interfere with the general rules of succession further than to vest the possession and enjoyment of the *corpus* of the whole estate in a single member of the family, subject to the legal incidents attached to it as the heritage of an undivided family. The unity of the

HINDU LAW — INHERITANCE — continued.**11. IMPARTIBLE PROPERTY—continued.****Impartibility—continued.**

family right to the heritage is not severed from the family property; but the mode of its beneficial enjoyment is different. Instead of several members of the family holding the property in common, one takes it in its entirety, and the common law rights of the others, who would be coparceners of partible property, are reduced to rights of survivorship to the whole, dependent upon the same contingency as the rights of survivorship of coparceners *inter se* to the undivided share of each, and to a provision for maintenance in lieu of coparcenary shares. **YENUMULA GAVURI-DEVANNA GARU v. YENUMULA RAMANDORA GARU**

[6 Mad., 93]

231. — Mode of succession to.—Priority of marriage.—Priority of birth.—Custom.—Evidence.—By the general Hindu law, where a subject of inheritance is from its nature indivisible, and can, therefore, descend to one only of several sons, the succession as between sons by different wives (other than the first wife) of equal caste, is to be determined by the priority of birth of the sons, and not by the priority of marriage of their respective mothers; and, therefore, with respect to the succession to an impartible zemindari in the district of Tinnevely in the Presidency of Madras, the son of the third wife is, in the absence of proof of any special custom or family usage to the contrary, to be preferred as heir to a subsequently born son of the second wife. **RAMALAKSHMI AMMAL v. SIVANANTHA PERUMAL SETHURAYER**

[12 B. L. R., 396 : 17 W. R., 553
14 Moore's I. A., 570]

Affirming decision of High Court in **SIVANANTHA PERUMAL SETHURAYER v. MUTTU RAMALINGA SETHURAYER** 3 Mad., 75

232. — Mode of succession.—Priority of sons by different mothers.—Where there is a plurality of wives equal in caste, the sons of each wife (not being the first wife) take precedence according to the dates of their respective births, and without reference to the dates of the marriages of their respective mothers. **BHUVANGRAV BIN DAVALATRAY GHORPADE v. MALONIBAV BIN DAVALATRAY GHORPADE** 5 Bom., A. C., 161

233. — Undivided impartible ancestral property.—Plaintiff, claiming title by succession both as heir by the general Hindu law and according to family custom, sued to recover the Totapalli estate in the zillah of Rajahmundry. Defendant, the widow of the person last in the enjoyment of the estate, pleaded that the plaintiff was not of the royal stock, but merely a dependent of the family; that he had an elder brother alive, and therefore could not sue, and that, in accordance with her husband's instructions, as contained in his will, she was about to adopt a son. She also alleged that plaintiff should have become a party to an appeal pending before the Privy Council from the decree in suit No. 3 of 1860,

HINDU LAW — INHERITANCE — continued.**11. IMPARTIBLE PROPERTY—continued.****Impartibility—continued.**

under which the defendant's husband had recovered possession of the estate from the widow of the prior possessor, **J. D.** The lower Court found that the plaintiff was an undivided member of the family in which the right to the estate was vested, and a dayadi of the defendant's late husband in the 12th degree through their common ancestor, **B. D.**, and decreed in plaintiff's favour. Pending this appeal, the Privy Council delivered judgment in the appeal from the decree in suit No. 3 of 1860, to which plaintiff and defendant had become parties. *Held*, in accordance with the judgment of the Privy Council, that the estate was acquired not by **J. D.**, but by his father, **B. D.**, the common ancestor, through whom plaintiff traced his kinship, and has ever since enjoyed as ancestral property derived from the said **B. D.** That accordingly the question of succession raised in this suit, similarly to that in the appeal before the Privy Council, was determinable by the law regulating the devolution of indivisible ancestral property, which had vested in the last possessor. That the objection to the plaintiff's title as heir by the general law was thus reduced to the questions: Whether his alleged kinship to the last possessor was proved; and if so, whether, according to the ordinary course of legal succession to such property, he, or the defendant, as the widow of the last possessor, was heir to the estate. That upon the first question plaintiff had proved his kinship to the last possessor, and upon the second that plaintiff was heir to the estate, in preference to the defendant, the widow of the last possessor. The sound rule to lay down with respect to undivided or impartible ancestral property is that all the members of the family who, in the way pointed out, are entitled to unity of possession and community of interest, according to the law of partition, are co-heirs, irrespective of their degrees of agnate relationship to each other, and that on the death of one of them leaving a widow and no near sapindas in the male line, the family heritage, both partible and impartible, passes to the survivors or survivor, to the exclusion of the widow. But when her husband was the last survivor, the widow's position as heir, relatively to his other undivided kinsmen, is similar to her position with respect to his divided or self and separately acquired property. **YENUMULA GAVURI-DEVANNA GARU v. YENUMULA RAMANDORA GARU**

[6 Mad., 93]

234. — Joint Hindu family.—Impartible raj.—Power of Rajah to alienate.—Primogeniture.—Suit by eldest son to set aside alienation.—Where there is no local or family custom overriding the general law, the succession to a raj or impartible zemindari, according to Hindu law, goes by primogeniture. In the absence of any custom to the contrary, a raj or impartible zemindari is, according to Hindu law, not separate property but joint family property. *The Shivagunga Case*, 9 Moore's I. A., 543; **Ramalakshmi Ammal v. Sivanantha Perumal Sethurayar**, 12 Moore's I. A., 570; **Doorga Pereshad Singh v. Doorga Kowari**, I. L. R.,

HINDU LAW — INHERITANCE — continued.**11. IMPARTIBLE PROPERTY—continued.****Impartibility—continued.**

4 Cal., 190; *Yanumula Venkayamah v. Yanumula Boockia Vankondora*, 18 Moore's I. A., 333; and *Periasami v. Periasami*, L. R., 5 I. A., 61, followed. *The Tipperah Case*, 12 Moore's I. A., 523, observed on. *BHAWANI GHULAM v. DEO RAJ KUARI* . . . I. L. R., 5 All., 543

See *PERIASAMI v. PERIASAMI*

[L. R., 5 I. A., 61
I. L. R., 1 Mad., 312

Reversing decision of the High Court in *PARNYASAMI alias KOTTAI TEVAR v. SALUKAI TEVAR alias OYTA TEVAR*.

235. ——— Zemindari.—

Personal property of zemindar.—The rule of impartibility applicable to zemindaris does not extend to personal property of a zemindar left at his death, and such property is divisible amongst his sons after his death. *RAJESWARA GAJAPUTTY NARAINA DEO MAHARAJALUNGARU v. VIRAPRATAPAH RUDRA GUJAPUTTY NARAINA DEO MAHARAJALUNGARU* . 5 Mad., 31

236. ——— Separate estate.—

The mere impartibility of an estate is not sufficient to make the succession to it follow the course of succession of separate estate. *The Shivagunga Case*, 9 Moore's I. A., 539; 9 W. R., P. C., 81, explained. *YANUMULA VENKAYAMAH v. YANUMULA BOOOKIA VANKONDORA* . . . 18 W. R., P. C., 21

[18 Moore's I. A., 333

237. ——— Impartible

zemindaris, Succession to.—Custom.—The succession to a zemindari which is admitted to be in the nature of a principality, impartible and capable of enjoyment by only one member of the family at a time, is governed (in the absence of a special custom of descent) by the general Hindu law prevalent in the part of India in which the zemindari is situated, with such qualifications only as flow from the impartible character of the subject. The succession to such a zemindari may be governed by a particular or customary canon of descent. The course of succession, according to the Hindu law of the south of India of such a zemindari, where the family was in other respects an undivided family, was held to be that the husband dying without male issue his widow inherited it. In the case of property of which part is the common property of a joint Hindu family and part the separate acquisition of a deceased brother, his widow (in default of male issue) succeeds to his separate estate. *KATTAMA NAUCHMAR v. RAJAH OF SHIVAGUNGA*

[2 W. R., P. C., 31; 9 Moore's I. A., 539

238. ——— Succession to raj.

Grant by Government.—Beng. Reg. XI of 1798.—Rights of junior members of family.—The land sued for was originally an impartible raj, and by family custom descended on the death of each successive Rajah to his eldest male heir. It was confiscated by Government; and in 1790, when the decennial

HINDU LAW — INHERITANCE — continued.**11. IMPARTIBLE PROPERTY—continued.****Impartibility—continued.**

settlement was made, was permanently conferred on A., a Hindu. A. in his lifetime, by his acts and otherwise, showed that he wanted the estate to descend to a single heir, and shortly before his death he made B., the son of his eldest grandson, such heir, and left a testamentary paper in furtherance of that object. The present suit was brought by some of the grandsons of A., who claimed to be co-heirs with B. under the ordinary Hindu law of inheritance, and contended that the will was a forgery; that A. had no power to make it; and that the special law of inheritance ceased when the first proprietor was expelled. It was found from the acts of the Government, and its dealings with the property, that A. derived his title by grant from the Government, who had full dominion over the estate. The estate consequently must be taken to have been the separate and self-acquired property of A., and the nature of the estate granted was held to be a fresh grant of the family raj, as it had existed before the confiscation, with its customary rule of descent, the omission of the title of raj in the grant (there being no sunnud in this case) not affecting the case, the title of Rajah not being absolutely essential to the tenure of the estate as a raj. Regulation XI of 1798 did not apply to this case, in which the grant was made before the passing of that Regulation, which, moreover, does not affect the descent of large zemindaris held as raj, or subject to family custom. The grant being of the nature found, it was further held that the question as to whether A. had by law power to make a will did not really arise in this case, the only person who could impeach the will being the eldest grandson of A., who had waived his right in favour of his son B., there being no inchoate rights of inheritance in the junior members of the family. *BEERPREETAB SAHNE v. RAJENDER PREETAB SAHNE*

[9 W. R., P. C., 15; 12 Moore's I. A., 1

239. ——— Power of Rajah

holding impartible raj.—Relinquishment.—Position of son on relinquishment.—There is no difference between the position of a Rajah holding an impartible raj and that of an ordinary zemindar in respect of his power to relinquish the property in favour of his next legal heir. Such a relinquishment is not forbidden by the Hindu law. Where the effect of such a relinquishment is to give the property entirely into the hands of the son, he can during his father's lifetime question and challenge any acts done, and any acts that are alleged to have been done, by his father, and which are denied by the father. *LUCHMER NARAIN SINGH v. GIBBON* . . . 14 W. R., 197

240. ——— Effect of, on

nature of property.—Joint and separate property.—The impartibility of property does not, *per se*, destroy its nature as joint family property, or render it the separate estate of the last holder, so as to destroy the right of another member of the joint family to succeed to it upon his death, in preference to those who would be his heirs if the property were

HINDU LAW — INHERITANCE — continued.**11. IMPARTIBLE PROPERTY—continued.****Impartibility—continued.**

separate. **DOORGA PRESHAD SINGH v. DOORGA KONWARI** . I. L. R., 4 Calo., 190: 3 C. L. R., 31 [L. R., 5 I. A., 149]

S. C. in the High Court. **DOORGA PRESHAD v. DOORGA KOORBER** . . . 20 W. R., 154

241. ——— Impartible estate.

Primogeniture.—Custom.—The principles on which is founded the judgment in *Ramalakshmi Ammal v. Sivanantha Perumal Ammal*, 14 Moore's I. A., 570, as to the succession to an impartible inheritance, apply with equal force whether the first-born son is born of a first married wife or of a wife afterwards married. The text of Manu, chapter IX, v. 125, distinctly shows that among sons born of wives equal in their class, and without any other distinction, there can be no seniority in right of the mother. In v. 122 of the same chapter the words "but of a lower class" added by the gloss of Cullina Bhatta are to be read as correctly inserted in the text. Two wives of a Palayagar of an impartible polliam having died before his marriage with a third and fourth wife, it was contended that the third being in the position of a first married or "royal" wife, her son was entitled to succeed to his father in preference to an elder son born of the fourth. *Held* that the elder son, though born of the fourth wife, was entitled by primogeniture under the rule above referred to, and that it was, accordingly, immaterial to consider whether or not this third wife was in the position of a first married wife. What might be the effect of one wife being "of a lower class" than another was not in question. **PADA RAMAPPA v. BANGARI SESHAMMA**

[I. L. R., 2 Mad., 286: 8 C. L. R., 315
L. R., 8 I. A., 1]

242. ——— Impartible polliam.

Primogeniture.—Property of joint family.—Survivorship.—An impartible polliam governed by the rule of primogeniture, though possessed exclusively by one member of the family, is the joint property of the family, and, in the event of a death, passes by survivorship. When, on the death of a Polliagar, the right of exclusive possession passes from one line of descent to another, it devolves, in the absence of proof of special custom of descent, upon the nearest coparcener in the senior line, and not necessarily on the coparcener nearest in blood. *Semble*,—The ruling of the Judicial Committee of the Privy Council in the *Tipperah case*, 13 Moore's I. A., 523, proceeds upon grounds which are in conflict with the rulings of the same tribunal in Madras cases and with the law of Southern India and Benares respecting the impartibility of property of a joint Hindu family. **NARAGANTI ACHAMMAGARU v. VENKATACHALAPATI NAYANIVARU** . I. L. R., 4 Mad., 250

243. ——— Impartible raj.

Succession in joint family to ancestral impartible estate.—Right of nearest male collateral.—Exclusion of widow where the family is joint, and the estate not separate.—Custom.—Right of females to inherit.—

HINDU LAW — INHERITANCE — continued.**11. IMPARTIBLE PROPERTY—continued.****Impartibility—continued.**

Impartible ancestral estate is not, merely by reason of its being impartible, the separate estate of the single member of the undivided family, upon whom it devolves, so long as the family continues joint. *Chintaman Singh v. Nowlukho Konwari*, I. L. R., 1 Calo., 153: L. R., 3 I. A., 263, referred to and followed. A female cannot inherit impartible ancestral estate, belonging to a joint family, under the Mitakshara, when there are any male members of the family who are qualified to succeed as heirs—a rule of law not dependent on custom; and a custom modifying the law in this respect must be a custom to admit females, not a custom to exclude them. *Hiranath Koer v. Ram Narayan Singh*, 9 B. L. R., 274, approved. Where a raj estate, ancestral and impartible, was not separate property and the family was undivided, and where no special custom existed, modifying the Mitakshara law of succession,—*Held* that the nearest male collateral relation of the last Rajah, who died without male issue, was entitled to succeed in preference to the Rajah's widow. This relation, *viz.*, a brother of the late Rajah's deceased father, at one time received an allowance for maintenance out of the family estate. What amounted to an attachment of this, according to a subsequent judicial decision, occurred in 1857. *Held* that he had not thereby been deprived of his right of succeeding as a member of the joint family. The raj estate in question originated in the partition of a more ancient one, with others out of which minor estates were formed. If in the latter there had been descents to widows, no inference hence, to support the widow's claim to inherit in this family, could be drawn. Such minor estates might have been separate (which estates granted for maintenance probably would be), and in that case the widows of the last holders would have succeeded them in due course of law. Unless connection is shown between families, evidence of a special family custom in one is not evidence of a similar family custom in another. **RUP SINGH v. BAISNI** . I. L. R., 7 All., 1: L. R., 11 I. A., 149

244. ——— Mitakshara law.

Exclusion of females from succession.—Impartible joint ancestral property.—Custom.—A female cannot inherit an impartible ancestral estate belonging to a joint Hindu family governed by the Mitakshara, where there are any male members of the family who are qualified to succeed as heirs. This is a rule of law, and not dependent on custom. A custom modifying the law must be a custom to admit females, not a custom to exclude them. **HIBANATH KOER v. RAM NARAIN SINGH**

[9 B. L. R., 274: 17 W. R., 316]

Upholding on appeal S. C. . 15 W. R., 375

But see **DURGA PRASAD SINGH v. DURGA KUNWARI** . 9 B. L. R., 306, note: 13 W. R., 10

where to a ghatwali estate which descended from the father to the eldest son, the younger sons having allowances made to them, a widow was held entitled to succeed as heir to her son.

HINDU LAW — INHERITANCE — continued.**11. IMPARTIBLE PROPERTY—continued.****Impartibility—continued.**

245. ————— *Succession to raj.*—*Tributary Mehals of Cuttack.*—*Beng. Reg. XI of 1816, s. 3.*—According to the Pachees Sawal, a brother of the Rajah of Attgurrh, one of the tributary mehals of Cuttack, has a preferential title over the Rajah's son by a phoolbebahe wife to succeed to the raj. The effect of a devise of his estates by a Rajah would be to alter the course of succession, and therefore contrary to section 3, Regulation XI of 1816. *NITTANUND MURDIRAJ v. SREEKURUN JUG-GEENATH BEWARTAH PATNAICK*. 3 W. R., 116

12. JOINT PROPERTY AND SURVIVORSHIP.

246. ————— *Joint property.*—*Succession per capita and per stirpes.*—Where property is acquired while a Hindu family is joint, according to the Bengal law, the inheritance goes *per capita* and not *per stirpes*. *RAMGUTTY DOSS v. NUNDO COOMAR DOSS*. 2 W. R., 11

RUTTUN KRISTO BOSOO v. BHUGOBAN CHUNDER BOSOO. 18 W. R., 32

247. ————— *Mitakshara law.*—*Joint and self-acquired property.*—A Hindu subject to the Mitakshara, dying possessed of a share in joint family property, and also of separately acquired property, the two will not necessarily devolve on the same heir; but they may either descend to different persons, or, if descending to the same persons, may descend in a different way and with different consequences. *PITUM KOONWAR alias MUNAR BIBEE v. JOY KISHEN DASS*. 6 W. R., 101

248. ————— *Separate enjoyment of self-acquired property.*—*Succession to self-acquired immovable property.*—By the law current in the Madras Presidency, an undivided Hindu is entitled during his lifetime to the separate enjoyment of his self-acquired immovable property; but on his death without male issue such property, unless it has been previously disposed of, devolves on his surviving coparceners, and his widow is only entitled to maintenance. *VARADIPREUMAL UDAIYAN v. ARDANARI UDAIYAN*. 1 Mad., 412

249. ————— *Survivorship.*—*Joint undivided family.*—There being a community of interest and unity of possession between all the members of a united family having common property, it follows that on the death of any one of them, the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and common possession. But the law of partition shows that as to the separately acquired property of one member of a united family, the other members of that family have neither community of interest nor unity of possession. The foundation therefore of a right to take such property by survivorship fails. *KATTAMA NAUGHAR v. RAJAH OF SHIVAGUNGA*. [2 W. R., P. C., 31: 9 Moore's L. A., 539]

SHIB NARAIN BOSE v. RAM NIDHEE BOSE
[9 W. R., 87]

HINDU LAW — INHERITANCE — continued.**12. JOINT PROPERTY AND SURVIVORSHIP—continued.****Survivorship—continued.**

250. ————— *Mitakshara law.*—*Succession.*—When, in an undivided Hindu family living under the Mitakshara law, a brother dies without having issue, but leaving brothers and nephews, the sons of a predeceased brother, the interest in the joint estate of the brother so dying does not pass on his death to his surviving brothers, but on partition the whole estate, including the interest of the brother so dying, is divisible, and the right of representation secures to the sons or grandsons of a deceased brother the share which their father or grandfather would have taken had he survived the period of distribution. *DEBI PARSHAD v. THAKUR DIAL*. I. L. R., 1 All., 105

251. ————— *Property, ancestral and self-acquired.*—*Joint tenancy.*—When property is held in coparcenary, the share of an undivided coparcener who leaves no issue, goes, according to Hindu law, to his undivided coparceners, whether the property is ancestral or acquired by the coparceners as joint tenants. *RADHABAI v. NANARAV*. I. L. R., 3 Bom., 151

252. ————— *Inheritance of illegitimate son among Sudras.*—*Coparceners.*—A Hindu of the Sudra caste died in 1850 leaving two widows, B. and S., a son Mahadu and daughter Darya, the children, respectively, of B. and S., and an illegitimate son Sadu. Sadu and Mahadu continued to live together for some time after their father's death; but subsequently owing to domestic quarrels they lived separately, and Sadu was allowed by Mahadu a portion of the family property under an agreement in writing. They were, however, joint and undivided in estate, and continued to be so until the death of Mahadu in 1865. In a suit by Sadu as heir of his father and brother for the whole of the ancestral property,—*Held* by a Full Bench (WESTROFF, C.J., KEMBALL and PINHEY, JJ.) that, after the death of their father, Mahadu and Sadu succeeded as coparceners to the whole property, subject to the maintenance of B., S., and Darya, if she were then unmarried, and in that event also to her reasonable marriage expenses,—Sadu, however, as an illegitimate son taking only half a share. *Held*, also, that inequality of shares did not prevent coparcenary and succession by survivorship, and that, as Mahadu and Sadu were coparceners from the death of their father until the death of Mahadu, the usual result of coparcenary followed on the occurrence of the latter event, *viz.*, the surviving coparcener (*i.e.*, the plaintiff Sadu) took the whole property. *Razi v. Govinda walead Teja*, I. L. R., 1 Bom., 97, followed. *SADU v. BAIZA*. I. L. R., 4 Bom., 37

253. ————— *Inheritance.*—*Daughter's sons, Nature of estate taken by.*—*Inheritance treated as joint property.*—The estate of V., a Hindu, having descended to D. and R., sons of the daughter of V., was held by them as joint tenants. D. having died, R. by will devised the estate to the

HINDU LAW — INHERITANCE — continued.**12. JOINT PROPERTY AND SURVIVORSHIP—continued.****Survivorship—continued.**

plaintiff. *Held* that, although the shares which devolve on the two sons of a daughter may not come to them as coparcenary property, yet, inasmuch as *D.* and *B.* had treated the estate as coparcenary property, the survivor, *B.*, was competent to dispose of the estate by will. *GOPALASAMI v. CHINNASAMI*
[I. L. R., 7 Mad., 458]

254. ——— *Coparceners.*—*Liability of property for debts.*—According to the rulings of the High Courts of Madras and Bombay, the undivided interest of a coparcener is not liable for his separate simple debts after his death, but lapses to the survivors on his death. *KOTTA RAMASAMI CHETTI v. BANGARI SESHAMA NAYANIVARU*
[I. L. R., 8 Mad., 145]

13. OCCUPANCY RIGHTS.

255. ——— *Right of occupancy.*—*Remote heirs.*—The strict Hindu law of inheritance does not universally apply to the descent of occupancy rights. Mere title by the law of inheritance is not to be regarded in determining the descent of an occupancy holding. A remote heir, not in possession, cannot on the death of the ryot claim the holding. *BOODHOO RAO v. LAL BHENEE* 2 N. W., 126

JAYEE RAM SURMAH v. MUNGLOO SURMAH
[8 W. R., 60]

256. ——— *Remote heirs.*—*Occupancy ryot.*—Remote heirs are not allowed to succeed to a right of occupancy. Sons, or immediate heirs, residing with the ryot in the village, succeeded on his death. *PAM KOORE v. UPPER BALLEE SING* 2 N. W., 36

14. RELIGIOUS PERSONS—ASCETICS—GURUS—MOHUNTS, &c.

257. ——— *Ascetics.*—*Succession to property of ascetics.*—*Right of occupancy.*—Although the High Court has, under the Hindu law, admitted the right of a disciple to succeed to the effects of an ascetic, it may be a question whether the Court does not go beyond that law when it permits a disciple to succeed to the property of an ascetic who leaves a large property, or any property which, if he conformed to the spirit of his religion, he could not have acquired. But however this may be, a tenant-right of occupancy is on a different footing from property which is exclusively the estate of a deceased ascetic, and the principles which govern the hereditary right of succession to a tenant-right of occupancy are such as an ascetic, if he conform to the spirit of his religion, cannot carry out. *SOORUS KOMAR PERSHAD v. MAHADRO DUTT* 5 N. W., 50

258. ——— *Succession to the property of ascetics.*—The principle of succession upon which one member of an order of ascetics succeeds to another is based entirely upon fellowship

HINDU LAW — INHERITANCE — continued.**14. RELIGIOUS PERSONS—ASCETICS—GURUS—MOHUNTS, &c.—continued.****Ascetics—continued.**

and personal association with that other, and a stranger, though of the same order, is excluded. *KHUGGENDER NARAIN CHOWDREY v. SHARBURGIE OGHORENATH* I. L. R., 4 Cal., 543

259. ——— *Guru.*—*Disciple leaving master and going to distant country.*—The disciple of a guru who leaves his spiritual master, without permission, and goes to a distant country and breaks off all intercourse with his preceptor, manifesting at the same time an intention to absent himself permanently, is not entitled, on his preceptor's death, to share in the succession to the preceptor's estate. *SOOGUN CHUND v. GOPAL GIR* 4 N. W., 101

260. ——— *Chela.*—Amongst saniasis generally no chela has a right as such to succeed to the property of his deceased guru. His right of succession depends upon his nomination by the deceased in his lifetime as his successor, which nomination is generally confirmed by the mohunts of the neighbourhood assembled together to perform the funeral obsequies of the deceased. Where a guru does not nominate his successor from among his chelas, such successor is elected and installed by the mohunts and principal persons of the sect in the neighbourhood upon the occasion of the funeral obsequies of the deceased. *Niranjana Barthes v. Padarath Barthes, S. D. A., N. W. P., 1864, p. 512*, followed. Where, therefore, a chela sues for possession of a village belonging to his deceased guru, founding such suit on his right of succession as chela without alleging that he had been nominated by the deceased as his successor and confirmed, or that he had been elected as successor to the deceased, such suit was held to be unsustainable. *MADHO DAS v. KAMTA DAS* I. L. R., 1 All., 539

261. ——— *Priest.*—*Disciple.*—In certain cases a priest may, according to Hindu law, be the heir of a deceased disciple. *JUGDA-NUND GOSSAMER v. KESSUR NUND GOSSAMER*
[W. R., 1864, 146]

262. ——— *Mohunt.*—*Chela.*—*Heir of deceased mohunt.*—According to Hindu law a chela is the heir of a deceased mohunt, and as such entitled to a certificate to enable him to collect his debts. *SHROFROKASH DOSS v. JOYRAM DOSS*
[5 W. R., Mis., 57]

263. ——— *Chela.*—*Heirs of deceased mohunt.*—Where the mohunt of a byragee muth died without having any chela,—*Held* that ordinarily his successor was appointed by the mohunts of other byragee muths, and that enquiry should be made as to the existence of a particular custom by which it was alleged that the property of the deceased passed to the brother of his spiritual preceptor. *RAMDOSS BYRAGEE v. GUNGA DOSS* . 3 Agra, 295

HINDU LAW — INHERITANCE — continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.****(a) GENERAL CASES.**

264. ——— **Suspension of inheritance.**—*Unborn sons.*—*Child in the womb.* *Right of.*—Proprietary right is created by birth, and not by conception. A child in the womb takes no estate. In cases where, when the succession opens out, a female member of the family has conceived, the inheritance remains in abeyance until the result of the conception is ascertained. If the child be still-born the estate goes, not to his heir, but to the heir of the last owner. A son or grandson's right of prohibition to his unseparated father making a gift, donation, or sale of effects inherited from his grandfather, cannot be exercised in favour of an unborn son. *GOVRA CHOWDHRAIN v. CHUMMUN CHOWDHEY*. . . **W. R., 1864, 340**

265. ——— *Unborn son.*—*Pregnancy.*—*Adoption.*—According to Hindu law, the right of inheritance is not suspended by pregnancy or until adoption. *DUKHINA DOSSEE v. RASH BEHARIE MOZOOMDAR*. . . . **8 W. R., 221**

266. ——— *Son not born when succession opened out.*—A sister's son, in order to have a preferential title over his paternal uncle, must have been born or conceived when the succession opened out. It is contrary to Hindu law that a mother should be a trustee for a son who may hereafter be conceived. *RASH BEHARIE ROY v. NIMAYE CHURN* [**W. R., 1864, 233**]

267. ——— *Unbegotten heir.*—An inheritance cannot remain in abeyance for an unbegotten heir (such not being a posthumous son). The succession must vest in the heirs existing at the time of the death of the person whose inheritance descends. *KOYLASHNATH DOSS v. GYAMONER DOSSER* [**W. R., 1864, 314**]

268. ——— **Divesting of estate.**—*Heir born after death of ancestor.*—By Hindu law an estate once vested cannot be divested in favour of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of a son of an excluded person if, having been begotten and being in the womb at the time of the ancestor's death, he is afterwards born capable of inheriting. *KALIDAS DAS v. KRISHNA CHANDRA DAS* [**2 B. L. R., F. B., 103; 11 W. R., O. C., 11**]

See also *BAFUJI v. PANDURANG*

[**I. L. R., 6 Bom., 616**]

269. ——— **Exclusion from inheritance.**—*Proof of ground for exclusion.*—The party who seeks to exclude one of the heirs to property from a share of the inheritance, is bound to prove the cause of the exclusion. *FUTTIQ CHUNDER CHATTERJEE v. JUGGUT MOHINIE DARI* [**22 W. R., 348**]

270. ——— **Disqualification.**—*Omnis probandi.*—*Presumption.*—*K. K.* died leaving a widow (*A.*), three sons (*B.*, *K.*, and *P.*), and

HINDU LAW — INHERITANCE — continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—continued.****(a) GENERAL CASES—continued.****Exclusion from inheritance—continued.**

a daughter (*W.*) *B.* and *K.* died unmarried, and *P.*, who survived them, left a widow (*C. M.*). *W.*'s son, *K. C.*, sued *C. M.* for 5 annas 15 gundas of the joint family estate. One of the pleas raised for the defence was that the sons, *B.* and *K.*, were disqualified from inheriting, and 1 anna 15 gundas was claimed as the exclusive property of defendant's husband under an alleged gift. *Held* that the presumption of Hindu law was against the alleged disqualification, and *B.* and *K.* having an admitted right to succeed, it was for the defendant to prove by positive evidence that they did not succeed by reason of the said disqualification. *CHUNDER MONER DABIA v. KRISTO CHUNDER MOZOOMDAR*. . . . **18 W. R., 375**

(b) ADDICTION TO VICE.

271. ——— **Addition to vice as unfitting son for inheritance.**—Vague and general evidence of plaintiff's gambling and licentious propensities is not sufficient to justify a finding that he has disqualified himself by "addiction to vice" for the performance of obsequies and such like acts of religion, and such evidence must disclose something like habitual maltreatment, or active and malignant hostility, to authorise a Court to pronounce the plaintiff "a professed enemy of his father" for the purpose of declaring him to have forfeited his right of inheritance by misconduct. *KALKA PRESHAD v. BUDHEE SAH*. . . . **3 N. W., 267**

(c) BLINDNESS.

272. ——— *Son of blind man.*—A Hindu died in 1832, leaving an only son, who had been blind from his birth, and two widows, the survivor of whom died in 1840. On the death of the surviving widow the nephew succeeded as heir, the blind son being by Hindu law excluded from inheritance. The blind man having married, a son was born to him in 1858. The blind man died in 1861. *Held* by *NORMAN, J.*, that on the birth of the blind man's son he became entitled to the inheritance from which his father had been excluded. *Held* on appeal (by a Full Bench) that by Hindu law an estate once vested cannot be divested in favour of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of the son of an excluded person if, having been begotten and being in the womb at the time of the ancestor's death, he is afterwards born capable of inheriting. *KALIDAS DAS v. KRISHNA CHANDRA DAS* [**2 B. L. R., F. B., 103; S. C. 11 W. R., O. C., 11**]

273. ——— **Incurable blindness.**—*Semble.*—A daughter who becomes incurably blind in her infancy has no right to inheritance, but only to maintenance. *BAKUBAI v. MANCHHABAI*. . . . **2 Bom., 5**

HINDU LAW — INHERITANCE — continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—continued****(c) BLINDNESS—continued.****Exclusion from inheritance—continued.**

274. ————— *Congenital blindness.*—*Blindness after birth.*—The blindness which, under the Hindu law as recognised in Bengal, excludes an afflicted person from inheritance, refers to congenital blindness, and not to loss of sight which has supervened after birth. **MOHESH CHUNDER ROY v. CHUNDER MOHUN ROY**

[14 B. L. R., 273; 23 W. R., 78]

275. ————— *Congenital blindness.*—*Person not born blind.*—According to the Hindu law as prevailing in the Bombay Presidency, blindness to cause exclusion from inheritance must be congenital. Therefore, where the widow of a childless intestate, though proved to have been totally blind for some years before the death of her husband, was admitted not to have been born blind, —*Held* that such blindness did not prevent her from inheriting the property of her husband on his decease. **MURAJI GOKUL DAS v. PARVATIBAI**

[B. L. R., 1 Bom., 177]

276. ————— *Incurable blindness.*—*Incurable blindness*, if not congenital, is not such an affliction as, under the Hindu law, excludes a person from inheritance. **UMABAI v. BHAVU PADMANJI**

[I. L. R., 1 Bom., 557]

(d) DEAFNESS AND DUMBNESS.

277. ————— *Deaf and dumb person.*—According to Hindu law, the son of a deaf and dumb man, born after the death of his grandfather, cannot succeed to the estate descended from his grandfather. *A.* died leaving four sons. One, *B.*, was born deaf and dumb. *B.* lived in commensality with his brothers. Some time after *A.*'s death a son was born to *B.* *Held* that *B.*'s son was not entitled to succeed as heir to a share of the property descended from *A.* **PARBESHMANI DAS v. DINANATH DAS**

[1 B. L. R., A. C., 117
S. C. 11 W. R., O. C., 19, note]

278. ————— *Deafness and dumbness from birth.*—*Divesting of estate.*—*Son of excluded person.*—One *B.*, a Hindu, died, leaving him surviving *L.*, his undivided son, born deaf and dumb, and the defendant, *P.*, his (*B.*'s) brother's son. *L.*, being disqualified from inheriting, the defendant, *P.*, at *B.*'s death succeeded to the entire family estate, and subsequently sold a part of it. *L.* subsequently married and had a son, the plaintiff, who sued to recover his half share in a certain village. *Held* that, according to Hindu law obtaining in Western India, the family estate vested in the defendant, *P.*, at the death of *B.*, to the exclusion of his deaf and dumb son, and the subsequent birth of the plaintiff did not divest the defendant of the inheritance which had solely vested in him. **BAFUT v. PANDURANG**

[I. L. R., 6 Bom., 616]

HINDU LAW — INHERITANCE — continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—continued.****(d) DEAFNESS AND DUMBNESS—continued.****Exclusion from inheritance—continued.**

279. ————— *Sons of deaf and dumb person.*—*Partition.*—*Disqualified heirs.*—*Birth of qualified heir.*—Under the Hindu law of inheritance which obtains in Southern India, the sons of a deaf and dumb member of an undivided Hindu family are entitled to a share of the family estate in the lifetime of their father, notwithstanding that they were born after the death of their grandfather. In such a case the estate vests on the death of the grandfather in the qualified heirs, subject to the contingency of its being divested on the recovery of the disqualified, or the birth of a qualified, heir. **KRISHNA v. SAMI**

[I. L. R., 9 Mad., 64]

280. ————— *Inheritance.*—*Exclusion from inheritance.*—*Dumbness.*—Dumbness, if from birth, is a cause of disinheritance in females as well as in males. A Hindu widow born dumb is, according to the law prevailing on this side of India, incapable of inheriting from her husband. Such widow is, however, entitled to her stridhan and to maintenance out of the property of her deceased husband. Case remanded to have the widow made a party to the suit, that it might be determined whether she was born dumb, and if so, that the amount of her stridhan and of her maintenance might be ascertained. **VALLABHAI SHIBHARAYAN v. BAI HARIGANGA**

[4 Bom., A. C., 135]

(e) INCONTINENCE.

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION—UNOASTITY.

281. ————— *Daughter's right of succession.*—Under the Hindu law prevailing in the Presidency of Bombay, a daughter is not debarred by incontinence from succession to the estate of her father. Smriti writers and commentators on Hindu law and judicial decisions on the question of a daughter's right of succession referred to and discussed. **ADITYA v. RUDRAYA**

[I. L. R., 4 Bom., 104]

(f) INSANITY.

282. ————— *Mental incapacity.*—*Idiotcy.*—The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiotcy, is not necessarily utter mental darkness. A person of unsound mind, who has been so from his birth, is in point of law an idiot. The reason for disqualifying a Hindu idiot is his unfitness for the ordinary intercourse of life. **TIRUMAMAGAL AMMAL v. RAMASWAMI AYYANGAR**

[1 Mad., 214]

283. ————— *Mitakshara family.*—*Suit by lunatic father to recover family property.*—*Disability to sue.*—A lunatic, a member of a joint Mitakshara family, cannot sue to recover property belonging to the joint family, he being,

HINDU LAW — INHERITANCE — continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—continued.****(f) INSANITY—continued.****Exclusion from inheritance—continued.**

under the Mitakshara law, disqualified from inheritance, and therefore entitled to no share or partition in the property but only to maintenance. **RAM SOONDER ROY v. RAM SANYA BHUGUT**

[I. L. R., 8 Cal., 919]

284. Congenital insanity.—Partition.—It is not necessary that madness or insanity should be congenital to disqualify a person from inheritance; a coparcener, therefore, who has become insane whilst in possession will lose his share on partition. **RAM SANYA BHUGUT v. LALLA LALJEE SANYA**

[I. L. R., 8 Cal., 149; 9 C. L. R., 457]

285. Incurable insanity.—In order to exclude a person from inheritance under the Hindu law on the ground of insanity, it is sufficient to show that when the succession opened he was mad, and not in a condition to perform the funeral oblations. Proof that his insanity was incurable is not necessary. **DWARKANATH BYSAK v. MAHENDRANATH BYSAK**

[9 B. L. R., 198; 18 W. R., 305]

286. Condition of mind at time succession opens out.—The condition of a minor's mind at the time the succession opens out to him is to be looked to; therefore, where a party obtained a decree declaratory of his right to succeed to certain property as reversioner on the death of the widows, and on their death he had become insane, *Held* he was not entitled to execute the decree. **BRAJA BHUKAN LAL AHUSTI v. BICHAN DOBI**

[9 B. L. R., 204, note; 14 W. R., 330]

287. Condition of mind at time succession opens out.—In order to exclude a person from inheritance under the Hindu law on the ground of insanity, it is sufficient to prove insanity at the time when succession to the property opens out. **WOOMA PERSHAD ROY v. GRISH CHUNDER PROCHUNDO**

[I. L. R., 10 Cal., 639]

288. Condition of mind at time succession opens out.—Incurable insanity.—A person is disqualified under Hindu law from succeeding to property if he is insane when the succession opens, whether his insanity is curable or incurable. Under the same law, when property has once vested by succession in a person, his subsequent insanity will not be a ground for its resumption. Under the same law, although a person becomes qualified to succeed to property, after the disqualification of insanity ceases, he cannot resume property from an heir who has succeeded to it in consequence of his disqualification when the succession opened. **DRO KISHEN v. BUDH PRAKASH**

[I. L. R., 5 All., 509]

289. Lunatic.—Although, according to Hindu law, a lunatic has no

HINDU LAW — INHERITANCE — continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—continued.****(f) INSANITY—continued.****Exclusion from inheritance—continued.**

rights of inheritance, he is not debarred from taking an estate duly conveyed to him. **GOURENATH v. COLLECTOR OF MONGHYR. COURT OF WARDS v. RUGMOOBUR DYAL. SHROFESHAD NARAIN v. COLLECTOR OF MONGHYR**

7 W. R., 5

290. Possession of property by lunatic.—A Hindu lunatic may be possessed of property though he cannot take it by inheritance. **COWET OF WARDS v. KUPULMUN SINGH**

[10 B. L. R., 364; 19 W. R., 184]

(g) LEPROSY.

291. Incurable leprosy.—Incurable leprosy of the sanious or ulcerous type, contracted before partition, excludes the person afflicted with it from a share in the ancestral estate. **ANANTA v. RAMABAI**

I. L. R., 1 Bom., 554

292. Virulent and aggravated form of leprosy.—It is only when leprosy assumes a virulent and aggravated type that it is by Hindu law made a ground for disqualification for inheritance. **JANARDHAN PANDURUNG v. GOPAL PANDURUNG**

5 Bom., A. C., 145

293. Expiation.—Onus of proof.—Where a party who claimed to be heir-at-law to the estate of a deceased Hindu was opposed on the ground that he was disqualified from inheriting by leprosy, but volunteered to state that he had performed the penance required by the Shastras for the expiation of the disease, he was held to have admitted thereby that the leprosy was of that grievous nature which demanded expiation before he could succeed to the inheritance, and to lie under the onus of proving the fact that expiation had been performed. **RHOONHNESSUREN DABHA v. GOUREN DOSS TURKOPUNOHANUN**

11 W. R., 535

294. Evidence of incurable disease.—When it is contended that a Hindu is incapable of inheriting by reason of an incurable disease, as leprosy, the strictest proof of the disease will be required. **ISSUR CHUNDER SHIN v. RANEE DOSSEE**

2 W. R., 125

NULLIT CHUNDER GOHOO v. BAGOLA SOONDUREN DOSSEE

21 W. R., 249

295. Leprosy after vesting of estate.—Divesting of property.—A leper's property to which he has succeeded by inheritance before the disease is not divested from him; he can make a valid gift of it. **SHAMA CHURN AUDHIOABEE BYRAGEE v. ROOP DOSS BYRAGEE**

6 W. R., 68

(h) MARRIAGE.

296. Forfeiture of moheniship by marriage.—Among the Gossains of

HINDU LAW — INHERITANCE — continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—continued.****(A) MARRIAGE—continued.****Exclusion from inheritance—continued.**

the Deccan and certain other places, marriage does not work a forfeiture of the office of mohunt and the rights and property appendant to it. **GOSAIN RAM-BHARTI JAGRUPBHARTI v. SUBAJBHARTI HARIBHARTI** . . . **I. L. R., 5 Bom., 682**

(C) OUTCASTS.

297. ———— *Act XXI of 1850.—Exclusion from caste.*—Since the passing of Act XXI of 1850 exclusion from caste, whether by renunciation of religion or from any other cause, is no longer a ground for exclusion from inheritance. **BRUJJUN LALL v. GYA PERSHAD** [2 N. W., 446]

298. ———— *Convert.—Act XXI of 1850.*—Before the passing of Act XXI of 1850 the property possessed or acquired by a Hindu convert to Mahomedanism prior to his conversion passed to his nearest heir professing the Hindu religion. **MEWA KOOFWER v. LALLA OUDH BEHARIE LALL** . . . **2 Agra, 311**

299. ———— *Marriage with Mahomedan.—Forfeiture of property.—Act XXI of 1850.*—The Hindu law disentitling a widow to inherit on re-marriage and marriage with a Mahomedan does not apply to a widow who became a Mahomedan before her marriage with a Mahomedan. According to section 3, Act XXI of 1850, and section 9, Bengal Regulation VII of 1832, conversion does not involve forfeiture of inheritance. **GOPAL SINGH v. DHUNGAR** . . . **3 W. R., 208**

300. ———— *Change of religion.—Degradation.—Death of husband while outcast.—Dissolution of marriage.—Suit by widow to recover husband's estate.*—In 1850 *K.* married *S.*, both being Brahmans. *K.* subsequently became a convert to Christianity. In 1881 *K.* died and *S.* claimed his estate. *Held* that, according to Hindu law, *K.* died an outcast and degraded, and that, as his degradation was unatoned for, the marriage became absolutely dissolved, and no right of inheritance remained to *S.* **SINAMMAL v. ADMINISTRATOR GENERAL OF MADRAS** . . . **I. L. R., 8 Mad., 169**

301. ———— *Exclusion from caste.—Act XXI of 1850.*—Exclusion from caste of a Hindu for an alleged intrigue does not involve deprivation of his civil rights to hold, deal with, and inherit his property (Act XXI of 1850). **KARU THEDATTA alias PULLAKATT NEELAKADAN NAMBOODRI v. MELE PULLAKATT VASSA DEVAN NAMBOODRI** . . . **1 Ind. Jur., N. S., 236**

302. ———— *Exclusion from caste.—Act XXI of 1850.*—*Held* that the mere fact that the plaintiffs (whose right by near relationship to maintain the suit was established) are out of caste

HINDU LAW — INHERITANCE — continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—continued.****(C) OUTCASTS—continued.****Exclusion from inheritance—continued.**

and that the men of pure blood of their tribe do not eat with them, is, of itself, no ground of exclusion from inheritance, section 1, Act XXI of 1850, having annulled any such disqualification. **TAJ SINGH v. KOUSILLA** . . . **1 Agra, 90**

303. ———— *Persons descended from outcasts.*—The doctrine of Hindu law that outcasts are incapable of inheritance has no bearing upon the case of the members of new families which have sprung from persons so degraded. **TARA CHUND v. RREE RAM** . . . **3 Mad., 50**

304. ———— *Divesting of property.—Exclusion from caste.*—It is a general rule of Hindu law that when the descent of an estate has taken place before the cause of exclusion from caste has arisen, the estate is not divested by the owner becoming an outcast. An estate which a mother has inherited from her son is not divested by reason of her subsequent unchastity. **DROKH v. SOOKHDO** . . . **2 N. W., 361**

305. ———— *Hindu becoming a byraee.*—A Hindu becoming a byraee, if he chooses to retain possession of, or to assert his right to, property to which he is entitled, may be doing an act which is morally wrong, but in which he will not be restrained by the Court, inasmuch as such an act does not exclude him from any rights he may have in such property. **JAGANNATH PAL v. BIDYANAND** [I. L. R., A. C., 114: 10 W. R., 172]

TEERLUCK CHUNDER v. SHAMA CHURN PROKASH [I W. R., 209]

306. ———— *Hindu becoming a byraee.*—A Hindu by becoming a byraee does not divest himself of all title in his family estate, which on his death devolves on his heirs, and not on a kept mistress, although she may have performed his funeral rites on account of his being an outcast. **KHOODERAM CHATTERJEE v. ROOKHINEE BOISTOBEN** [15 W. R., 197]

(F) REFUSAL TO ADOPT.

307. ———— *Widow's refusal to adopt.*—A widow's refusal to comply with a direction to adopt is no ground of forfeiture as regards her rights of inheritance. **UMA SUNDARI DABER v. SOUROBINER DABER** [I. L. R., 7 Cal., 288: 9 C. L. R., 83]

(E) UNCHASTITY.

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

308. ———— *Mother, Unchastity of.*—The texts which pronounce that Hindu females are debarred from inheriting by unchastity

HINDU LAW—INHERITANCE—continued.**15. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—continued.****(k) UNCHASTITY—continued.****Exclusion from inheritance—continued.**

are confined in their application to the widow, as such, and do not impose a condition on the succession of the mother. *KOJIKADU v. LAKSHMI*

[I. L. R., 5 Mad., 149]

309. ————— *Mother's unchastity.*—An estate which a mother has inherited from her son is not divested by reason of her subsequent unchastity. It is a general rule of Hindu law that when the descent of an estate has taken place before the cause of exclusion from caste has arisen, the estate is not divested by the owner becoming an outcast. This rule would not under Hindu law apply to a wife who has become unchaste. But there is no authority to show that it does not apply to a mother. *DROKH v. SOOKHEDRO* 2 N. W., 361

310. ————— *Mother's unchastity.*—*Inheritance to property of son.*—A mother, guilty of unchastity before the death of her son, is, by Hindu law, precluded from inheriting his property. *RAMNATH TOLAPATTO v. DURGA SUNDARI DEBI* I. L. R., 4 Cal., 550

HINDU LAW—JOINT FAMILY.

Col.

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY . . . 2341
 - (a) GENERALLY . . . 2341
 - (b) EVIDENCE OF JOINTNESS . . . 2350
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See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.**(a) GENERALLY.**

1. ————— *Presumption.*—*Parties not Hindus residing in Hindu country.*—*Presumption governing family.*—*Per MITTER, J.*—When parties who are not Hindus reside in a Hindu country, and

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Presumption—continued.**

adopting the customs of Hindus, have lived as Hindu families do, joint in food and estate, they will be governed by a Hindu law of coparcenary, and the legal presumptions applicable to the position of a joint Hindu family will be applied to them. *Abraham v. Abraham*, 9 Moore's I. A., 195, and *Vellai Mira Ravuttan v. Mira Moidin Ravuttan*, 2 Mad., 414, followed. *Sudder-tonnessa v. Majada Khatoon*, I. L. R., 3 Cal., 694; 2 C. L. R., 308, explained; *Achina Bibee v. Ajejoowissa Bibee*, 11 W. R., 45; and *Moonshee Sirdar v. Molungo Sirdar*, 24 W. R., 1, followed as to manner of dealing with evidence of joint ownership. *RUF CHAND CHOWDHRY v. LATU CHOWDHRY* 3 C. L. R., 97

2. ————— *Status of Hindu family.*—*Onus probandi.*—The original status of all Hindu families must be presumed to be joint and undivided. The *onus probandi* is on those who put forward claims upon the basis of separation and self-acquisition. *BIJASH KOOSWAR v. BHAWANEE BUKSH NARAIN* W. R., 1864, 1

PRANATH CHOWDHRY v. KASHINATH ROY CHOWDHRY W. R., 1864, 169

BEER NARAIN SIRCAR v. TENGOOWRIE NUNDE [1 W. R., 316]

NILMONEY BHOOLA v. GUNGA NARAIN SHAHUR ROY 1 W. R., 334

MOONYE SURESH v. LOMUN SURESH [2 W. R., 283]

KATTAMA NAUCHER v. RAJAH OF SHIVAGUNGAR [2 W. R., P. C., 31: 9 Moore's I. A., 539]

BIPRO PERSHAD MYTH v. KENA DRYER [5 W. R., 82]

DEURM CHUND SHATEA v. RAJMOHISHEN DEBBI 5 W. R., 145

LUKHUN CHUNDER v. MODHOO MOOKHERJEE DOSSIE 5 W. R., 273

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NUND RAM v. CHOOTOO . . . 1 Agra, 255

GANE BHIVE PARAB v. KANE BHIVE [4 Bom., A. C., 169]

BAI MANOHA v. NAROTAMDAS KASHIDAS [6 Bom., A. C., 1]

SHEO RUTTUN KOONWUR v. GOVE BEHARY BHUKUT 7 W. R., 449

RADHA RUMON KOONDOD v. PHOOL KOOMAREN BIBEE 10 W. R., 28

GORINDNATH SEIN v. GORIND CHUNDER SEIN [10 W. R., 393]

DHAROO SOOKLAIN v. COURT OF WARDS [11 W. R., 336]

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Presumption—continued.**

KOONJ BEHARRI PATTUCK v. GYADEEN PATTUCK
[11 W. R., 361]

PRABHU LALL v. BUKHOREE LALL
[12 W. R., 124]

BROJONATH PAUL CHOWDERY v. SREEROPAL PAUL CHOWDERY . . . 12 W. R., 468

SHUSHEE MOHUN PAL CHOWDERY v. AUKIL CHUNDER BANERJEE . . . 25 W. R., 232

INDER COOMAR DOSS v. DOOLAL CHUNDER DOSS . . . 18 W. R., 258

DROBO MOYEE v. TARA CHAND PAL
[18 W. R., 459]

BABOOLALL JHA v. JUMA BUKH
[22 W. R., 116]

BHUGOBTUTY MISRAIN v. DOMUN MISSE
[24 W. R., 365]

3. ———— Onus probandi.—

The presumption of the Hindu law in a joint undivided family is that the whole property of the family is joint estate, and the onus lies upon a party claiming any part of such property as his separate estate to establish that fact. *GOPIN KRISHN GOSAIN v. GUNGAPERSAUD GOSAIN* . . . 6 Moore's I. A., 53

4. ———— Presumption as to property acquired while family is joint.—The presumption is that all acquisitions made while a family is joint are made from the joint funds, and the burden is upon the person who alleges that any property is self-acquired to prove that allegation. *RAMPHUL SINGH v. DEB NARAIN SINGH*
[11 L. R., 8 Calc., 517; 10 C. L. R., 469]

SHIB PERSHAD CHUCKERBUTTY v. GUNGA MOHUN DEBEE . . . 16 W. R., 291

5. ———— Joint nucleus.—

Where a family is joint, and there is a nucleus from which property may be acquired, the presumption is that property acquired by any member is joint property, and the onus is with those who allege that it is self-acquired. *PRAN KRISHN MOZOOMDAR v. BHAGERUTEN GOOPTIA* . . . 20 W. R., 153

JUGODUMBA DEBIA v. ROHINEE DEBIA. ROHINEE DEBIA v. DIGAMBEER CHATTERJEE
[23 W. R., 522]

6. ———— Onus probandi.—Suit for share of ancestral property.—In a suit for a share of ancestral property, the onus is on the defendants to prove their allegation of separation at a certain time, they having admitted that the family was joint up to that time, and claiming the property as separately acquired subsequent to that date. *BISSUMBHUR SINGH v. SOORODHUNY DOSSEE* . . . 3 W. R., 21

TREELOHUN ROY v. RAJKISHEN ROY
[5 W. R., 214]

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Onus probandi—continued.****7. ———— Presumption.**

—Evidence of separation.—The father and the son under the Mitakshara law are in the position of a joint Hindu family; and where ancestral estates are admitted to exist, the presumption of law is that all the property they are in possession of is joint property, until it is shown by evidence that one member of the family is possessed of separate property. The burden of proof, therefore, is on the member alleging self-acquisition. *SUDANUND MOHAPATTUR v. SOOR-JOOMONNE DAYE* . . . 11 W. R., 436
This case went to the Privy Council, but it was decided on a point which made the decision of this point unnecessary.

See SOORJOMONNE DAYE v. SUDDANUND MOHAPATTUR . . . 12 B. L. R., 304
[20 W. R., 377; L. R. I. A., Sup. Vol. 212]

8. ———— Presumption.—

Suit for share in joint property.—In a suit to establish the plaintiff's right to a share in joint properties belonging to a family subject to the Mitakshara law, where a part of the property sued for was admitted to be joint,—*Held* that the presumption of Hindu law was that the residue of the property was also joint, and that the onus lay with the defendants to prove separate acquisition without the aid of joint funds. Where the members of a Hindu family are living in a joint family-house, enjoying in common the produce of part of the joint property, the separate possession by any member of a specific portion of the joint property ought not to be treated as an exclusive or adverse possession against the other members. *HERRA LALL ROY v. BIDYADHUR ROY*
[21 W. R., 343]

9. ———— Presumption as to property being joint.—

As a result of litigation a decree was passed establishing the title of *Z.* as a brother by adoption to *L.* and a co-sharer of his family property; but no possession was actually directed to be given to *Z.* except of the zemindari which was the principal family estate. Subsequently an execution creditor of *Z.* took possession of two lots, which were no part of the zemindari proper, the one having been acquired as a separate inheritance by an ancestor, and the other having been purchased by *L.* in the name of the priest of the family. *Held* that *Z.*'s title to the two lots was the same as his title to the zemindari, and that the burden of proof lay upon those who insisted that the two lots did not form part of the joint family estate. *CHAND HURRAN MAITREY v. NARENDRIO NARAIN ROY* . . . 19 W. R., 231

10. ———— Waste land.—

Self-acquisition.—Where waste land was taken up and cultivated by the father of an undivided Hindu family, and the question was whether it was family property or self-acquired,—*Held* that the burden of

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Onus probandi—continued.**

proof lay on those who asserted that it was self-acquired. **SUBBAYYA v. CHELLAMMA**

[**I. L. R., 9 Mad., 477**]

11. ———— Presumption.—

Raj.—*Separate estate.*—In the case of an ordinary joint undivided family the presumption would be that the property is joint, but where a plaintiff, though admitting the family is undivided, contends that the family estate is a raj and has always been held by one member separate and distinct from the others who are only entitled to maintenance, the undivided nature of the family alone on this contention can raise no presumption as to the joint nature of the estate so as to shift the burden of proof from the plaintiff to the defendant,—a presumption inconsistent with the contention itself. But if under such circumstances the head of the family alleges that he has made purchases in the name of a single member, and that allegation is traversed, the onus will be on the party making the allegation to prove his case. **RAJENDER PRATAB SAHA v. BEER PRATAB SAHA**

[**W. R., 1864, 111**]

12. ———— Presumption.—

Purchase of property with joint funds.—Held by the majority of the Court (**JACKSON, J.**, dissenting) that the existence of joint family property being admitted, the presumption was that all acquired property belonged to the family, and that the onus was on the defendant in this case, who set up a plea of self-acquisition, to prove that the joint estate was so small that, after providing for the maintenance of the family, nothing remained to form a fund for the purchase of other properties for the benefit of the joint family. **TARACHURN MOOKERJEE v. JOY NARAIN MOOKERJEE**

[**8 W. R., 226**]

13. ———— Presumption as to

house built by member of joint family.—*Claim to exclusive possession.*—Where a member of a family claims an exclusive right to a house which he has built, the presumption of Hindu law against his claim arises only if the family is joint, having possession of joint property. **GUNGADHUR CHATTERJEE v. SOORJO NATH CHATTERJEE**

[**15 W. R., 446**]

14. ———— Proof of sepa-

rate acquisition.—*Adverse possession.*—Where both parties are descendants of the same common ancestor, and plaintiff proves that the property belonged to that common ancestor, and separation between the parties has taken place within statutable limit, it lies on the opposite party asserting it to be divided to show exclusive title by separate acquisition by some ancestor, apart from the right of succession by inheritance from the common ancestor, or a distinct severalty of interest and a clear adverse possession for more than twelve years. **BAIKER SINGH v. BEVERTH SINGH**

[**1 Agra, 162**]

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Onus probandi—continued.**

15. ———— Presumption as to joint character of all property.—When a family is joint it cannot be presumed that all the property in the hands of any member is joint. **SADABURTH PERSHAD SAHOO v. LOTF ALI KHAN. PHOOLBAS KOOR v. LALL JUGGESSUR SAHI. BIKRAMJEET LALL v. PHOOLBAS KOOR. RAMDHYAN KOONWAR v. PHOOLBAS KOOR**

[**14 W. R., 339**]

Upheld on review [**18 W. R., 43**]

16. ———— Purchase from one member.—*Notice of joint character of property.*—Presumably, every Hindu family is joint in food, worship, and estate; and this presumption applies in the absence of any evidence of a nucleus of joint property, and even without evidence that the family is undivided. A purchaser, therefore, from one member of a Hindu family, is affected with notice of the claims of the other members. **GOBIND CHUNDER MOOKERJEE v. DOORGADEESAD BABOO**

[**14 B. L. R., 337; 22 W. R., 243**]

BEER NARAIN SIRCAR v. TRENGOWEIN NUNDES
[**1 W. R., 316**]

17. ———— Sale and subsequent re-purchase by member of joint family.—The rule of Hindu law in cases of joint family property (i.e., that it must be presumed to be joint until proved to be the contrary) is applicable to a case where the property has passed by sale into the hands of third parties, and has been redeemed by private purchase by one of the former shareholders. **GOROO PERSAUD ROY v. DABEE PERSAUD TEWARER**

[**6 W. R., 53**]

18. ———— Suit for joint property.—*Presumption.*—In a suit to recover possession of a share of joint property sold in execution, on the ground that the judgment-debtor (plaintiff's brother) was the owner of only a portion, where defendant pleaded that the whole property had been made over by the grandfather, by a deed of gift, to the judgment-debtor,—Held that the plaintiff was entitled to the presumption of copartnership, and the onus lay with the defence to prove that the property had passed absolutely to the judgment-debtor. **GOPEE LALL v. BHUGWAN DOSS**

[**12 W. R., 7**]

19. ———— Presumption as to purchase of property.—When a property is purchased in the name of one of the members of a joint Hindu family the presumption, according to Hindu law, is that it is purchased with money derived from joint funds. **BAKER MADHUB BOSE v. SOODHA MADHUB BOSE**

[**2 Hay, 333**]

20. ———— Presumption as to purchase of property.—The presumption being that an estate purchased by one of several Hindu brothers living in commensality is the joint estate of

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Onus probandi—continued.**

all, if a plaintiff seeks to dispossess the other brothers under a title acquired from the brother in whose name the estate was purchased, the onus of proving that it was the sole property of such brother lies upon him. **ANUND MOKUN ROY v. LAMB**

[**Marah.**, 199: 1 Hay, 374

MUBOWATH DAS ROY v. GODA KOLITA

[**30 W. R.**, 342

21. ——— Purchase made when family is joint.—Purchases made when a family is joint by individual members thereof are presumably made out of the common funds, and for the common benefit. And it is incumbent on any member of the family alleging that a purchase made whilst such family was joint was made out of his separate funds to establish his allegation by proof. **HART SINGH v. DABEE SINGH** **2 N. W.**, 306

22. ——— Separate acquisition.—Presumption.—The plaintiffs sued to have their rights declared under a mukurari-maurasi lease obtained by *I.*, father of the defendant, but it was said with joint funds and for the joint family, which consisted of *I.* and his two brothers, fathers of the plaintiffs. The defence was that the lease was granted to *I.* after the dissolution of commensality. The existence of any nucleus of joint property was not proved. *Held* that, where one member of a joint family is found to be in possession of any property, the family being presumed to be joint in estate, the presumption is, not that he was in possession of it as separate property acquired by him, but as a member of a joint family. Therefore, the burden of proof was on the defendant to show that *I.* had acquired the property separately, and that it was property which could by law be treated as a separate acquisition. **TARUCK CHUNDER PODDAR v. JODESHUR CHUNDER KOONDOO** . . . **11 B. L. R.**, 193: 19 **W. R.**, 178

23. ——— Purchase by son.—*Joint funds.—Presumption.*—In the case of a purchase by a son undivided in interest from his father, the legal presumption, in the absence of evidence to the contrary, would be that the purchase was made with the joint funds. **NARAYAN DESHPANDE v. ANAJA DESHPANDE** . . . **I. L. R.**, 5 **Bom.**, 130

24. ——— Purchase with joint funds.—Execution of decrees.—A purchase by a member of a Hindu joint family with the joint funds is a purchase on account of the joint family, and property so bought may be taken in execution for a joint family debt. **BISSESSUR LALL SAHOO v. LUCHMESSUR SINGH** . . . **L. R.**, 6 **I. A.**, 233

25. ——— Joint property.—Presumption that family is joint.—The presumption of Hindu law is that every family is joint, and that all property possessed by the family is joint. A member of an undivided family may, however, acquire sepa-

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Onus probandi—continued.**

rate property, but the burden of proof lies upon him to prove the independent character of the acquisition. The essence of his exclusive title is that the separate property was acquired by his sole agency without employing what is common to the family. **MOOLJI LILLA v. GOKULIDAS VULLA I. L. R.**, 8 **Bom.**, 154

26. ——— Presumption as to family being joint.—Joint enjoyment of property.—The normal condition of a Hindu family being joint, it must be presumed to remain joint, unless some proof of a subsequent separation is given; and where property is shown to have been once joint family property, it is presumed to remain joint until the contrary is shown; but the mere fact of a family being joint is not enough to raise a presumption in law that property acquired by one member of that family is joint property. Where *A.*, as purchaser, claimed a share in property as being joint family property,—*Held* that *A.* was not only bound to show that the family was joint, but that the property in question became joint property when acquired, or that at some period since its acquisition it had been enjoyed jointly by the family. **SHIU GOLAM SINGH v. BARAN SINGH** . . . **1 B. L. R.**, **A. C.**, 164: 10 **W. R.**, 198

27. ——— Separate acquisition.—In a suit by a purchaser to recover a share in certain property of one of three brothers, who were admittedly living in commensality, the plaintiff alleged the property was purchased by his vendor and the other brothers with joint funds, the defendants alleging that it was bought by one of them other than the plaintiff's vendor with his separate funds. *Held* the onus was on the plaintiff to show that there was a joint fund from which the property could have been purchased. **KHILUT CHUNDER GHOSH v. KOONS LALL DEUR**

[**11 B. L. R.**, 194, note: 10 **W. R.**, 333

28. ——— Separate acquisition.—Presumption.—Nucleus.—Semble.—When property has been purchased by an individual member of a joint Hindu family, the burden of proof is on those who claim it to be joint property to show that there was a nucleus of joint property out of which it could have been purchased. **DENOWATH SHAW v. HURRYNARAIN SHAW** . . . **12 B. L. R.**, 349

29. ——— Acquiescence in property being considered joint.—Certain Hindus descended from a common ancestor, after having lived in commensality and joint estate, separated, no deed of separation being executed or reservation expressed of any kind. About eleven years after, one of the parties to the separation sued the others, alleging that certain immovable property, which stood in the name of the defendants or their ancestor, had remained in the possession of the defendants on the allegation of exclusive purchase; but that it could be

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Onus probandi—continued.**

proved to have been acquired by joint ancestral income during the time the family was joint. *Held* that the common presumption of Hindu law in favour of members of a joint family did not apply to such a case, and it lay on the plaintiffs to show why they were silent so long. Where other property was proved to have been separately acquired by the members of the family, it was held that there was no more presumption of joint than of separate acquisition. **BADUL SINGH v. CHUTTERDHARE SINGH**

[9 W. R., 558]

30. ——— Purchase by Hindu widow in husband's lifetime.—Presumption.—Where the widow of one of three brothers claimed two thirds of a dwelling-house which had been the joint family property of the three brothers, on the ground that one third fell to her as widow of the deceased and mother and guardian of his son, and that she had purchased the other third share from one of the brothers out of her own stridhan during the lifetime of her husband, —*Held* that, though it was equally difficult to prove that the purchase-money was stridhan, or that it was the joint property of the three brothers, yet, in the absence of evidence that the brothers had other joint property from which they derived joint profits, of which the purchase-money could be treated as a part, the sale of the second third share to plaintiff under a genuine and valid instrument duly conveyed it to her and made it her property. **GONESH JUNGHE DEBIA v. BIRESHWAR DEUL** . . . 25 W. R., 176

31. ——— Proof of separate acquisition in joint family.—Where the members of a joint Hindu family derived considerable property from an ancestor after whose death these members of the family lived long together, the purchases of the property in dispute by the plaintiff could not be treated as his separate acquisitions made from the money which had come to him with his wife, and by means of funds arising from that money. **KRISTNAPPA CHETTY v. RAMASAWMY IYER**

[8 Mad., 25]

32. ——— Separate acquisition.—Purchase in name of son.—Where the ancestor of a joint Hindu family purchased a property in the name of his youngest son, the onus was held to be on those claiming under the youngest son to prove that the property was his separate possession. **JOY-NARAIN ROY v. PUNCHANUND** . W. R., 1864, 10

33. ——— Purchase in name of son.—Presumption.—When a father and son lived as a joint family, and property was purchased in the name of the son, the presumption is that the property was joint estate, and purchased in the name of the son with a resulting trust in favour of the father. The burden of proving that it was separate estate is on those who claim it as such. **POORNIMAH CHOWDHRAIN v. DROPODEE DOSSETT** . W. R., 1864, 108

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(a) GENERALLY—continued.****Onus probandi—continued.**

34. ——— Presumption of joint property.—Cesser of commensality.—Suit to obtain a declaration of the plaintiff's right to a share of an estate which he claimed to be joint family property and to have his share allotted to him; the defendant contending that it was not joint property, but separate acquisition after the separation of the family, —*Held* that the cesser of commensality was only material to the determination of the issue in the case in so far as it removed or qualified the presumptions which the Hindu law might otherwise raise, that an acquisition made in the name of an individual son of the family was made by the head of the family, and as part of the family estate, and that though a cesser of commensality had taken place the property claimed was joint family property. **ANUNDESH KOONWAR v. KHERDOO LALL**

[14 Moore's I. A., 412; 18 W. R., 69]

(b) EVIDENCE OF JOINTNESS.

35. ——— Presumption of union.—Near and remote relationship of members.—Presumption of union in a Hindu family is stronger as between brothers than as between cousins, and the presumption is weaker the further from the common ancestor the descent has proceeded. **MORO VISHVA-NATH v. GANESH VITHAL** . . . 10 Bom., 444

36. ——— Commensality.—"Ijmalee." *Meaning of.*—The word "ijmalee" expresses joint tenancy, even where commensality is not implied. **PEARRE MOHUN BIRRE v. MADHUS SINGH**

[15 W. R., 83]

37. ——— Evidence of joint occupation.—Where part of the family property is proved to be joint, and the members live in commensality, there is a very warrantable presumption, according to Hindu law, that the family is joint. **GOLAM MUSTAFA KHAN v. SHEO SOONDUREE BUR-MOHAN** . . . 15 W. R., 304

38. ——— Onus probandi.—Presumption.—The mere fact of a Hindu family living in commensality is not sufficient to raise a presumption of their property being joint. The existence of joint funds out of which the property might have been purchased must also be proved to raise the presumption of the property being joint. **RADHIKA PRASHAD DEY v. DHARMA DAS DEBI**

[3 B. L. R., A. C., 124; 11 W. R., 499]

39. ——— Presumption of joint ownership.—There can be no presumption of joint ownership from the mere fact of commensality. **KHILUT CHUNDER GHOSH v. KOONJLALL DEB**

[11 B. L. R., 194, note; 10 W. R., 333]

40. ——— Purchase.—Presumption arising from commensality.—The mere fact

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(b) EVIDENCE OF JOINTNESS—continued.****Commensality—continued.**

of one person living jointly or in commensality with others, affords no presumption that property purchased by that person was purchased with the joint funds. **KRISTO CHUNDER KURMOKAR v. RUGHONATH KURMOKAR**

[12 B. L. R., 352, note: 10 W. R., 328]

41. ——— Suit for possession of property alleged to be joint.—In a suit to establish the right of the plaintiff's judgment-debtor in certain lands in regard to which a claim was set up in the execution stage on the ground of their being self-acquired property, it was held that the plaintiff having proved commensality and joint trade, and the existence of some property in the family before separation the onus was on the defendant to rebut the *prima facie* case made out. **CHUNDRO TARA DEBIA v. BUKSH ALI** 11 W. R., 305

42. ——— Son-in-law merely living in house of father-in-law.—The presumption of Hindu law as to joint property cannot apply in a case where the property is claimed through a son-in-law merely living in the house of his father-in-law and not shown to be joint in family or funds in any legal sense. **DOSSEN MONNE DOSSEN v. RAM CHAND MOHUR** 7 W. R., 249

43. ——— Business with joint funds carried on by members of family.—*Establishment of business.*—*Self-acquired property.*—*Partnership.*—*Onus probandi.*—*D.*, one of five brothers, constituting an undivided Hindu family but having no ancestral estate, acquired personal property with which, with the aid of his brothers, he established and carried on a banking business at five different places. Such circumstances, under the general principles of Hindu law,—*Held* to constitute a joint family property in which the brothers were entitled to share. The burden of proof that such was only an ordinary partnership and not a jointly acquired family property, lies on the party claiming it to have been separately acquired. **RAMPRESHAD TEWARRY v. SHRO CHURN DASS. SHRO CHURN DASS v. RAMPRESHAD TEWARRY. THOOKRA v. RAMPRESHAD TEWARRY** [10 Moore's I. A., 490]

44. ——— Use of names of all members in deed of purchase.—*Presumption as to joint property.*—Where it was admitted that in the title-deed, by which certain property in dispute was held, the names of all the brothers in a Hindu family were used as purchasers, and that in subsequent proceedings (mutation and partition) before the Collector, the names of all the other members were similarly used as owners,—*Held* that there was sufficient ground for presuming joint property until the contrary was established. **LALLA KALEN SAHOY v. LALLA KUMLA SAHOY** 24 W. R., 351

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(b) EVIDENCE OF JOINTNESS—continued.**

45. ——— Payment of a joint jumma.—*Possession.*—*Joint possession.*—*Evidence of.*—The mere fact that a joint jumma is payable to Government is not evidence of joint possession. **SURBESHU MUSTOFEE v. RAMLOCHUN CHUCKERBUTTY** [2 Hay, 81]

46. ——— Payment by one brother to another without receipt.—*Presumption of joint property.*—*Onus probandi.*—The fact of one brother (plaintiff's husband) remitting certain sums of money to another brother (defendant) and no receipts being taken for them, and no accountability being stated, leads to the conclusion of the brothers being joint in property and in mess. *Per* MARKEBY, J.—So also the fact of the two brothers being sued jointly upon a bond given by both, and of defendant discharging the debt alone, raises the presumption that the defendant discharged the debt out of the joint funds. **HURISH CHUNDER MOOKERJEE v. MOKHODA DEBIA** 17 W. R., 565

47. ——— Separate debts contracted by manager.—*Presumption that debt is joint.*—The condition of a Hindu family is *prima facie* joint, and, therefore, property held by the managing member of a Hindu family is *prima facie* joint; but as there is nothing to prevent the individual managing member from contracting debts on his own account, there is no presumption that a debt contracted by him is joint. **SUNKUR PRESHAD v. GOUBY PRESHAD** I. L. R., 5 Cal., 321

48. ——— Possession of tank.—*Presumption from previous possession.*—In a suit to recover a share of a tank, on the allegation of its being joint family property,—*Held* that the mere fact of plaintiff's having at some previous time been in possession could be no proof of his title, or shift the onus on defendant. **HURISH CHUNDER BHUTACHARJEE v. NUFUR CHYNDER KOONE** [9 W. R., 461]

49. ——— Onus probandi.—*Suit for possession of joint property.*—Where a party sues for a moiety of certain property on the ground that it is joint property, the onus is on him to prove that the property is joint, failing which his suit is liable to be dismissed. **SOBBRUDEA DOSSEN v. BOLORAM DEWAN** . W. R., F. B., 57: 1 Ind. Jur., O. S., 82

50. ——— Suit for property acquired from proceeds of alleged joint trade.—In a suit for property acquired from the proceeds of an alleged joint trade, the joint character of which is neither admitted nor proved, the onus lies in the first instance on the plaintiff, who is not entitled under the circumstances to the ordinary presumption of Hindu law arising from the existence of joint family estate. **HURISH CHUNDER DASS v. GOUBRY PRESHAD CHATTERJEE** 16 W. R., 163

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(b) EVIDENCE OF JOINTNESS—continued.****Onus probandi—continued.**

51. ——— Joint property, Suit to recover.—Onus of proof.—Limitation Act, 1877, arts. 127, 144.—The plaintiff sued for a share in certain property on the allegation that his ancestor *K.* and the defendant's ancestor *R.* were uterine brothers who, while they were living in commensality, purchased the property in question with their joint funds in the name of *R.*; and that subsequently *K.* left his home, and then his daughter, the plaintiff's mother, enjoyed the property jointly with *R.* until her death, when the plaintiff succeeding to his right and interest applied to have his name registered as a joint proprietor, but his application was refused; hence this suit. The defence was that *R.* bought the property in question with his own funds after he and his brother *K.* had separated; that *R.*, and afterwards the defendants, had been in exclusive possession for more than twelve years; and that the suit was barred by limitation. *Held* (reversing the judgment of *FILM, J.*) that the onus was on the plaintiff to prove that the property was joint property. Before a plaintiff can bring his case within article 127 of Schedule II of the Limitation Act, 1877, it is incumbent on him to show that the property in which he seeks to recover a share is "joint property." *ORROY CHURN GHOSH v. GOBIND CHUNDER DUTT* . . . **I. L. R., 9 Calo., 237**

52. ——— Evidence of re-union after separation.—Presumption of re-union after division.—Where a division has taken place amongst the members of a Hindu family, one of whom is a minor, the circumstance that the father and minor continue to live together, and that their shares become mixed, does not conclusively constitute a state of re-union between the father and the minor, but is evidentiary matter only to prove the re-union. *KUTA BULLY VIRAYA v. KUTA CHUDAPPA VUTHAMULU* . . . **2 Mad., 235**

53. ——— Separation and partition as far as one member is concerned.—Where the partition of a family property is made simply for the purpose of determining what the share of one member is, and after his secession the other members continue to live together and mess together, remaining to all intents and purposes as they were before, these others must be presumed to have re-united. *PETAMBUR DUTT v. HURRISH CHUNDER DUTT* . . . **[15 W. R., 200**

See JADUB CHUNDER GHOSH v. MOTER LALL GHOSH . . . **1 Hyde, 214**

54. ——— Branch of family remaining joint after separation.—Onus of proof.—Presumption as to branch of family remaining joint when separation has taken place between it and other branches of joint family.—Each branch of a family, whose original stock has been divided, may continue to

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(b) EVIDENCE OF JOINTNESS—continued.****Branch of family remaining joint after separation—continued.**

be a joint family within the meaning of the Hindu law, subject to all the presumptions arising from that state, and when such a state of facts exists, the onus of proving a separation is on those who allege it, the presumption still being, in the absence of such proof, that the branch of the family remained joint amongst themselves. *BATA KRISHNA NAIK v. CHINTAMANI NAIK* . . . **I. L. R., 12 Calo., 262**

55. ——— Sole possession by one member of portion of joint property by consent.—Although the members of a joint Hindu family have all, in strict law, a right to participate in every portion of the joint property, that right may be modified by the conduct of the parties, e.g., when a particular member is allowed to retain sole possession of a garden and to improve and beautify it, and to adapt it to his own purposes. *COLLECTOR OF 24-PERGUNNAHS (COURT OF WARDS) v. DEBNATH ROY CHOWDERY* . . . **21 W. R., 222**

56. ——— Purchase of property by one member benami.—Presumption.—Property purchased by a member of an undivided family with money belonging exclusively to himself is his separate acquisition in which the other members are not entitled to share. *BOONIADI LALL v. DEWKEH NUNDUN LALL* . . . **19 W. R., 223**

57. ——— Support of relatives and payment of marriage expenses.—Presumption.—If the property is separate the presumption operates no longer, and each member is separate owner of what he possesses. Even in the case of a separate family blood relationship within certain degrees imposes a moral duty, though not a legal duty, towards dependent relatives. The support on a liberal scale of poor relatives and even payment of their marriage expenses are not in themselves without other evidence proof of a joint family. *MOOLJI LILLA v. GOKULDAS VULLA* . . . **I. L. R., 8 Bom., 154**

58. ——— Evidence rebutting presumption.—Exception to rule of onus in Hindu joint family.—Admitted partition or non-acquisition with joint funds.—Although Hindu law presumes joint tenancy to be the primary state of a Hindu family, and the general rule is that the burden of proof that partition has taken place lies upon him who asserts it, there are exceptions to this general rule, e.g., when it is admitted or proved that property in dispute was not acquired by the use of patrimonial funds, the party alleging such property to be joint must prove his averment. So too when it is admitted or proved that partition has already taken place, the presumption is that it has been a complete partition, and it lies upon a person alleging that family property, in the exclusive possession of one of the members of the family after such partition, is liable to be partitioned, to

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(b) EVIDENCE OF JOINTNESS—continued.****Evidence rebutting presumption—continued.**

make good his allegation by proof. **NARAYAN BAJI v. NANA MANOHAR** . 7 Bom., A. C., 155

59. ———— *Suit for property after separation.*—After a general separation in food and a partition of estate, and after the brothers have commenced to live separately, if any one of them comes into Court alleging that a particular portion of property originally joint continues to remain so, the onus of proof lies on him. **RAM GOBIND KOOND v. HOSSEIN ALI** 7 W. R., 90

PREM CHUND DAN v. DARIMBA DEBIA
[15 W. R., 238]

60. ———— *Evidence to rebut.*—When the presumption of joint property in a joint Hindu family is rebutted by production of an exclusive and separate title, the party against whom such a title is produced is bound to show that the title is not really exclusive and separate. **LOKENATH SUREMA v. OOMA MOYEN DEBEE** . 1 W. R., 107

61. ———— *Allegation of separation.*—*Suit for possession.*—Plaintiff alleged that she and her deceased husband's minor brother had, with his other three surviving brothers, held joint possession, but that these three had wrongfully sold the land to the other defendants, and she prayed for possession by reversal of the sale. The purchasers appeared and filed a written statement to the effect that the vendors had separated from their father in his lifetime, and that they (the purchasers) had been in succession to the vendors for more than twelve years in possession. *Held* that the onus lay on the plaintiff, who would have to show not only that she represented one of the heirs of her husband's father, but also that the land in dispute was part of the estate left by the father at his death. **PHOOKUN PANDEY v. SOOKKIA** 10 W. R., 436

62. ———— *Partial separation.*—The presumption of Hindu law that a family remains joint until a separation is proved, is not applicable where it is admitted that a disruption of the unity of such family has already taken place; a presumption under such circumstances cannot arise as to whether the other members of the family remained joint or became separate. **RADHA CHURN DASS v. KRIPA SINDHU DASS**
[1 L. R., 5 Cal., 474; 4 C. L. R., 438]

63. ———— *Onus probandi.*—*Division of property.*—In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that everything in the possession of any one member of the family belongs to the common stock. The onus of establishing the contrary rests on him who alleges separate property. But this presumption does not arise where it appears that there has been a divi-

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(b) EVIDENCE OF JOINTNESS—continued.****Evidence rebutting presumption—continued.**

sion of the family property and a separation in the family, all the members of which are living separately. **BANNOO v. KASHEE RAM**
[1 L. R., 3 Cal., 315]

64. ———— *Onus probandi.*—Where plaintiff, a member of a Hindu family, suing for a division of the family estate, admitted on the face of his plaint that he had taken possession of part of the family property, and for sixteen years lived separate, the *onus probandi* lies on him to show that the circumstances under which he became possessed of the portion of his property were consistent with his statement that the family remained undivided. **SOMANGOURA BIN DAJAMANGOURA v. BHARMANGOURA** 1 Bom., 43

(c) EVIDENCE OF SEPARATION.

65. ———— *Character of proof.*—*Evidence to rebut presumption of joint property.*—Character of "strict proofs" which an auction-purchaser of the rights of one member of a joint Hindu family can be expected to give, in order to rebut the presumption in favour of joint estate in a joint Hindu family. **LALLA SREEDHUR NARAIN v. LALLA MODHO PRESHAD** 8 W. R., 294

66. ———— *Portions of estate held in severalty.*—*Evidence to rebut presumption of joint property.*—So long as no partition of a joint estate is proved, the presumption is that the property is joint. The fact that certain parcels are admittedly held in severalty does not rebut the presumption as regards the rest of the joint estate. **SREERAM GHOSH v. SEEN NATH DUTT CHOWDERY**
[7 W. R., 451]

67. ———— *Separate occupation of portions of dwelling-house.*—*Evidence to rebut presumption of joint property.*—Where there is joint occupation of some portions of a joint family dwelling-house, and the separate occupation of other portions of the same property appears to be merely permissive, such separate occupation does not necessarily imply that the properties occupied are separate properties. **GOVE LALL SINGH v. MOHESH NARAIN GHOSH** 14 W. R., 484

68. ———— *Occupation of separate house.*—*Presumption as to commensality.*—The mere circumstance that one of several brothers of a Hindu family occupied a separate dwelling-house does not rebut the presumption of the family being joint, if it appear that they dealt with the family property as joint property. **BELAS KORE v. BROWANNE BUKSH** Marah., 641

69. ———— *Separation in mess.*—*Presumption of joint property.*—Mere separation in

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.****Separation in mess—continued.**

mess is not sufficient to rebut the presumption of joint property arising out of nucleus of joint property. **BANEE MADHUB MOOKERJEE v. BRAGOBUTTY CHURN BANERJEE** . . . 8 W. R., 270

70. ——— Separation in food and residence.—Presumption of separation in estate.—Separation in dwelling and food would give rise in Hindu law to a presumption of separation in estate. The evidence of members of the family would be the best evidence as to whether the parties were joint or separate; the account books would be simply corroborative. **JAGUN KOOME v. RUGHOONUNDUN LALL SAHOO** . . . 10 W. R., 148

71. ——— Separation in dwelling, food, and business.—Presumption of separation in estate.—Notwithstanding separation in dwelling, food, and business, members may yet be joint as to property. **SHREAJOODDREH AHMED v. HOREL SINGH** [25 W. R., 116]

72. ——— Separation of shares.—Presumption of joint family.—Proof of separation of shares is not sufficient to rebut the presumption of the joint character of a Hindu family or to shift the burden of proof. **BILASH KOONWAR v. BHAWANEE BUKSH NARAIN** . . . W. R., 1864, 1

73. ——— Use of one name in documents.—Presumption of sole proprietorship.—In a Hindu family where commensality is admitted the mere use of one brother's name in documents relating to the property affords no presumption whatever of such brother being the sole proprietor. **KISHEN KOMUL SINGH v. JANOKHE DASSEE**

[1 Ind. Jur., O. S., 23: W. R., F. R., 3

JANOKHE DASSEE v. KISTO KOMUL SINGH

[Marsh., 1: 1 Hay, 20

DEELA SINGH v. TOOFANEE SINGH

[1 W. R., 307

74. ——— Deed providing separate accommodation.—Evidence of partition.—The fact of the members of two branches of a Hindu family being separate in food and worship is quite compatible with their never having been separate in estate. A document providing separate house accommodation for the members of each of the two branches points rather to a division of enjoyment than to a division of ownership or estate. The absence of attestation by caste-men to documents by which a Hindu affects to deal with his property as though he were separate in estate, is a circumstance which throws suspicion on the truth of an alleged separation, as the presence of such would be satisfactory evidence of a state of things generally believed to be true at the time. **CHEABILA MANCHAND v. JADAVBHAI** . . . 3 Bom., O. C., 87

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.**

75. ——— Separation in food and habitation.—Separation of joint family, Evidence of.—Although a family may be separate in food and habitation, it may still be joint under Hindu law, if the family property be joint. In this case there was held to be not sufficient evidence of separation. **PARBUTTY COOMAR v. SUDASUT PHEHAD**

[2 Hay, 315

76. ——— Separation in residence and transaction of affairs.—Evidence of partition.—Evidence of some separation in residence, separate transaction of affairs in certain instances, and acquisition of the property in dispute by plaintiff, all occurring in recent years, are not sufficient to prove division. **KRISHNAPPA CHETTY v. RAMASWAMY IYER**

[8 Mad., 25

77. ——— Separate appropriation of profits.—Evidence of partition.—Separate appropriation of profits would in some cases be very good evidence of a tacit agreement amongst the members of a joint Hindu family, to hold their property according to their separate shares. **CHYET NARAIN SINGH v. BUNWARAN SINGH** . . . 23 W. R., 395

78. ——— Alienation of share of one member.—Proof of separation in estate.—The mere fact of one of several co-sharers alienating his share of the property is no proof of separation in estate. **TRELOUGHAN ROY v. RAJKISHEN ROY**

[5 W. R., 214

79. ——— Portion of estate separately held.—Long separate possession.—The acts of different members of a family in allowing separate portions of the banks of a tank to be held severally for so long a time that no one can tell when such possession began, constitute a separation of the land which cannot be disturbed at the instance of one member without proof that he has jointly or otherwise held possession of the lands in question within twelve years. **SURESSUR METHOOR v. GOSSAIN DOSS METHOOR** . . . 17 W. R., 210

80. ——— Incomplete separation.—Absence of separate enjoyment through opposition of co-sharer.—Where the surviving sharer in an estate sought to be put in possession of his co-sharer's portion, as manager on behalf of the latter's widow, on the ground that, though the deceased co-sharer had made efforts to reduce his share to distinct possession, those efforts had not been completely successful when he died, and he could not therefore be said to have had a separate enjoyment of the said share. Held that as the deceased co-sharer had done all that was possible to obtain separate possession, and it was only the opposition of the plaintiff that had obstructed him, it would be allowing plaintiff to benefit by the wrong he had done to give him possession; that the co-sharers must be held to have separated, and that the share of the deceased co-sharer must be held to

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.****Incomplete separation—continued.**

have passed to those to whom, though not his immediate heirs, he had been taking steps, when he died, to devise the possession of it. *JOY NARAIN GILL v. GOLUCK CHUNDER MYTEE* . . . 25 W. R., 355

81. ——— Management by one brother.—Presumption of property being joint.—Where property is not expressly shown to be separate, the presumption of Hindu law is that it is joint, and when one brother has managed the property and made collections and acquired property out of such collection, he is accountable to his other brothers who are entitled to share in the property so acquired. *FRANKISEEN PAUL CHOWDREY v. MOTHORA MOHUN PAUL CHOWDREY* . . . [1 Ind. Jur., N. S., 78; 5 W. R., P. O., 11; 10 Moore's I. A., 403]

82. ——— Record of proprietorship in one name.—Purchase from one member of family.—The mere fact of the name of the managing member of a joint Hindu family standing as the recorded proprietor of an estate is not, *per se*, sufficient to give title to a purchaser for valuable consideration from him, unless at the time of the purchase the purchaser was ignorant of the real state of the family, and was really led by that circumstance to believe that the recorded proprietor was the sole owner. *GOUR CHUNDER BISWAS v. GREENSH CHUNDER BISWAS* . . . 7 W. R., 120

83. ——— Property standing in name of one member.—Separate possession and acquisition.—The mere fact of certain property standing in the name of one member of a joint family is no index to the real owner, nor is the existence of a separate possession any evidence as to separate acquisitions, unless such separate possessor can prove consent of the other sharers to his keeping a separate account. *LALLA BHARNE LALL v. LALLA MODHO PERSAUD* . . . 6 W. R., 69

RUNJEET SINGH v. MADUD ALI . . . 3 Agra, 222

84. ——— Entry in revenue records of one name.—Presumption as to property being joint.—*D.*, claiming as a widow of *A.*, brought a suit of ejectment against the sons of *A.*'s brother, deceased. *D.* admitted that the property had originally been the joint ancestral property of *A.* and his brother. Held that the mere appearance on the face of the revenue records that *A.* was sole owner was not sufficient to rebut the presumption of Hindu law that the property remained joint. *JUSBOONDAH v. AJODHIA PERSHAD* . . . 2 Ind. Jur., N. S., 261

SHIBSOONDREY DOSSEH v. RAKHAL DOSS SIKKAR [1 W. R., 33]

MUN MOHINEN DABEE v. SOODAMONEE DABEE [3 W. R., 31]

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.**

85. ——— Deed of sale and mutation of names.—Evidence of separation in estate.—Deeds of sale and mortgage and mutation of names in the Collector's register, as amongst members of a Hindu family, are evidence of separation. *PEARY LALL v. BHAWOOT KORE* . . . W. R., F. B., 18; [1 Ind. Jur., O. S., 100]

86. ——— Registration of name of widow after husband's death.—Partition.—*Evidence of partition.*—Where property is joint and ancestral the mere registration of the widow's name after her husband's death, and sole possession by her, is not sufficient proof that the property has been divided in the absence of any evidence of regular partition. *LUGHMUN PERSHAD v. MOONNEEN KOONWER* . . . [1 Agra, 220]

87. ——— Registration of name as lumberdar.—Presumption.—Onus probandi.—Where an estate was originally ancestral belonging to a joint and undivided Hindu family, the presumption of law being that a family once joint retains that status, can only be rebutted by evidence of partition or acts of separation; and the *onus probandi* lies on the party who claims a share in such estate to prove that it is a divided family. The entry of the name of one member of a joint family as lumberdar (the party liable for the assessment of the revenue) on the registry being for fiscal purposes, is not, *per se*, sufficient evidence to establish the exclusive proprietary right of the party whose name is so registered, and the rights of copartners *inter se* are not affected by such registration. *CHENNEA v. MIHREN LALL* . . . [11 Moore's I. A., 369]

88. ——— Registration of name of one member as proprietor.—Ancestral property.—Onus probandi.—Where property is proved to be ancestral, the mere registration of one brother as proprietor is of little value as supporting a case of the property not being joint, and the burden of proving that the property is not joint rests on him who alleges that to be the case. *AMRIT NATH CHOWDREY v. GAUREI NAUTH CHOWDREY* . . . [6 B. L. R., 232]

S. C. UMRETHNATH CHOWDREY v. GOURNATH CHOWDREY.

[15 W. R., P. O., 10; 13 Moore's I. A., 542]

89. ——— Registration in name of female member.—Property purchased in name of female members of family.—The wives and mothers of the members of a joint undivided Hindu family so long as they continue to live in the family and are supported out of its income, are just as much members of that family as their husbands and sons; and where property is purchased in the name of one such female member during the life of her minor son, the presumption of joint acquisition arising in such cases cannot be rebutted by the mere fact that her name was used in making the purchase or entered in the

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.****Registration in name of female member—continued.**

Collector's books as the purchaser. **CHUNDER NATH MOITRO v. KRISTO KOMUL SINGH**. 15 W. R., 357

90. ———— Presumption.—

Property purchased in names of wife and daughter-in-law.—In a suit for partition of joint family property, it was found that certain property stood partly in the name of the wife of the original proprietor, and partly in that of a daughter-in-law. *Held* that a wife, a member of a joint family, is, as regards property held in her name, in the same position as her husband with respect to property acquired in his name, and subject to the same presumption in favour of the joint family. **Chunder Nath Moitro v. Kristo Komul Singh**, 15 W. R., 347, followed. **Chowdhraia v. Terini Kant Lahiri Chowdhry**, 15 C. L. R., 41, distinguished. **NOBIN CHUNDER CHOWDHERY v. DOKHOBALA DAS**. I. L. R., 10 Cal., 686

91. ———— Presumption of joint property.—When property stands in the name of a female member of a joint Hindu family there is no presumption that such property is the common property of the family. **NARAYANA v. KRISHNA** [I. L. R., 8 Mad., 214

92. ———— Purchase and possession of portion of property by one member.—Source of purchase-money.—Where a Hindu family lives joint in food and estate, the presumption of law is that all the property they are in possession of is joint property, until it is shown by evidence that one member of the family is possessed of separate property. The purchase of a portion of the property in the name of one member of the family, and the existence of receipts in his name respecting it, may be perfectly consistent with the notion of its being joint. The criterion in such cases in India is to consider from what source the purchase-money comes. **DHURM DASS PANDEY v. SHAMA SOONDREY DEBIA** [8 W. R., P. O., 48; 3 Moore's I. A., 229

93. ———— Purchase by one member.—Evidence of want of sufficient funds.—Where the plaintiff, a member of a joint Hindu family, claimed a share in certain property as having been purchased with the joint funds, and the defendant alleged that it was purchased by him with his own funds; and it was proved that the joint family property was not at the time of the purchase sufficient, after supporting the family, to leave any surplus funds from which the property in suit could have been purchased.—*Held* that the presumption of joint ownership was rebutted, and it was for the plaintiff to show the acquisition of the property with joint funds. The party alleging self-acquisition is not in every case bound to show the source from which the purchase-money was derived. **DHURMOODHAREE LALL v. GUNPUT LALL**

[11 B. L. R., 201, note; 10 W. R., 122

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.****Purchase by one member—continued.**

94. ———— Separate acquisition.—Presumption.—Onus probandi.—The presumption of Hindu law that any property acquired during the time a Hindu family remains joint belongs to all the members of the joint family, does not take away the onus which lies on the plaintiff in a suit to recover a share of the property of proving his case; it merely aids him in proving it. Such presumption is liable to be rebutted by means other than enquiring as to the source from which the purchase-money of the property was derived. That criterion, though the most satisfactory, is not indispensable. Evidence that the property claimed to be joint was purchased in the name of one member only, that after the purchase the members separated, and each member carried on business separately, and that the property was thenceforward in the exclusive possession, and used for the business, of the member in whose name it had been purchased, is evidence sufficient to rebut the presumption that the property was joint. **BHOLANATH MAHTA v. AJOODHIA PERSAD SOOKUL** [12 B. L. R., 336; 20 W. R., 65

95. ———— Receipt of purchase-money by one member.—Source of consideration-money for purchase.—The mere fact of the consideration-money for property sold by a member of a joint Hindu family having passed through his hands, does not relieve him of the onus of proving the source from which the money came, or to rebut the presumption of joint ownership. **KOONJ BEHAREE DUTT v. KERTTUNATH DUTT**. 8 W. R., 270

96. ———— Separate dealing by one of several partners.—Onus probandi.—The onus of proving separation according to Hindu law is on the party setting it up. According to Hindu law a separate dealing is no proof of a separation of partners. **KHEEROODHUR LALL v. SEETULRAM**

[2 Hay, 353

97. ———— Separate acquisition.—Onus probandi.—Purchase by one member of family in his own name, but with joint funds.—In a suit by a member of a joint Hindu family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree passed against the estate of E., one member of the family, for his separate debt, the defendants sought to rebut the presumption that the property in dispute was part of the joint estate by showing that, though the members of the family were joint in food, and at particular seasons of the year lived together in the family dwelling-house, they also had separate dealings and funds of their own; and that while the family had some ancestral estate, several members of the family had acquired separate property from their own funds, and dealt with it as their own without reference to the other members of the family. They also relied

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.****Separate acquisition—continued.**

on the following facts as showing that the property in dispute was the separate property of *E.*, viz., that during *E.*'s lifetime the other members of the family allowed him to appear to the world as the sole owner thereof, and on one occasion when *E., B.* the kurta, and a third member of the family, entered into a security-bond with the Collector, whereby *E.* pledged this property, and the two others pledged other properties, each of them described the property pledged by him as being in his possession "without the right of any co-sharers." On the other hand, the plaintiff, in addition to oral evidence to show that the property in dispute had been purchased out of the joint family funds, although the purchase was made in the name of *E.* alone, filed the family account-books and the private account-books of *E.* for the same purpose, as well as certain letters which passed between *B.* and *E.* relative to the purchase of the property. *Held* that the evidence as to the separate trading funds and property of the several members of the joint family, and their independent dealing with such property, disclosed such a state of things as might be fairly held to weaken, if not altogether to rebut, the ordinary presumption of Hindu law as to property in the name of one member of a joint family, and to throw upon the plaintiff the onus of establishing the joint nature of the property claimed by clear and cogent evidence. *Held*, also, that the mere fact that *E.*, while trading on his separate account, was permitted by the other members of the joint family to appear to the world as the sole owner of family estates, did not disentitle those members to recover from the defendant, the purchaser at a sale in execution of a decree against *E.*, their own share of such estates. *BOND SING DOODHARIA v. GOWDER CHUNDER SEN*. 12 B. L. R., P. C., 317; 19 W. R., 356

96. ——— Joint funds.—

Separate trading.—Suit between a widow claiming administration to the estate and effects of her deceased husband as his only legal personal representative, and a *caveator* claiming the whole family property as an undivided second cousin of the deceased and sole surviving member of the family. The widow asserted a division, and that the whole property of the deceased had been self-acquired by his father. The Court of first instance found against division and against self-acquisition, laying the burthen of proof of each question entirely on the party asserting the facts. On appeal it was contended for the appellant (the plaintiff) that the onus on plaintiff was sufficiently discharged when it was shown that the two branches of the family were trading separately, and that certain items of property were acquired in the names of members of the branch of the family to which plaintiff's husband belonged; that then it rested with the other side to show that there were joint funds from which the purchases could have been made. *Held*, in accordance with the view of the Judicial Commit-

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.****Separate acquisition—continued.**

tee of the Privy Council in *Dhurm Dass Pandey v. Shama Soondery Dibiah*, 3 Moore's I. A., 229; and the observations of COUCH, C.J., in *Taruck Chander Poddar v. Jodheshur Chander Koondoo*, 11 B. L. R., 198, that such a contention could not be maintained. *VEDAVALLI v. NARAYANA*. I. L. R., 2 Mad., 19

99. ——— Self-acquisition.—Partibility of property given by father to sons.—Arrangements made as to enjoyment of joint property. Effect of, on members.—Whilst the members of a Hindu family are found in possession of joint ancestral estate, all property in the possession of any member of the family is to be presumed to be joint, and it is incumbent on the member who claims property in his possession as his separate property to prove his sole title to it. Separate property may be acquired by a member of an undivided family by gift, and the character of impartibility attaches to gifts made by a father to his unseparated sons. What is acquired by the father's favour will subsequently be declared exempt from partition. Separate property may be acquired by the exertions of a member of the family without detriment to the family funds. It may be acquired with money borrowed on the sole credit of the borrower, and it may be acquired by the mutual agreement of the members of the family. It is not necessary for the preservation of the joint nature of family property that the members of the family should live in commensality; they may dwell and mess apart, and yet remain joint in property. Parties who allege that the acquisitions of the several members of a Hindu family are not to be brought into hotchpot, and divided *per stirpes*, must show that they were acquired in such a manner as to constitute them separate property and impartible. And it is incumbent on those parties who admit that a partition has been made of certain portions of the family estate, and seek a re-partition of the portion so partitioned, to show that a condition attached to the partition which rendered it inoperative, or that the members of the family have consented to a re-partition of it. The several members of a family may agree to take loans from the common fund, and treat the profits on such loans as the separate property of the several members by whom the loans have been respectively taken. *NURSHING DASS v. NARAIN DASS*. 3 N. W., 217

Affirmed by Privy Council in S. C. 26 W. R., 17

100. ——— Separate acquisition.—Members carrying on separate dealings.—Manager of joint family.—In a suit for partition and for an account from the principal defendant, who was alleged to have been the kurta of a joint Hindu family since the death of a former kurta, it appeared that the former kurta by his will directed that his wife and daughter-in-law should manage his property during the minority of the plaintiffs who were his son and grandson. These ladies applied for a certificate

HINDU LAW—JOINT FAMILY—continued.**1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—continued.****(c) EVIDENCE OF SEPARATION—continued.****Separate acquisition—continued.**

under Act XXVII of 1880, and thereupon as guardians for the plaintiffs granted an am-mukhtarnamah to the principal defendant. In the suit the defendants variously claimed the properties alleged to be joint as their separate acquisitions, and there was evidence of the different members of the family having carried on separate dealings. The lower Court found that the principal defendant was not under the circumstances karta of the family, but held that the burden of proving separate acquisition was upon the defendants, and declared the properties claimed to be joint. On appeal held (1) that the principal defendant was not the karta, and that the plaintiffs were bound to look to the managers first, and (2) that although the members of the family had certain properties joint, yet the ordinary presumption applicable to a simple case of coparcenary did not apply. **UDAY CHAND BISWAS v. PANOHOO RAM BISWAS. HUSBAND DASI v. PANOHOO RAM BISWAS. 11 C. L. R., 514**

101. — Long possession as proprietor.—Proof of separation.—In a suit brought to recover a share of land alleged to be joint family property where the defendants pleaded possession as proprietors for more than thirty years.—Held it was not necessary to prove actual separation, but it was enough to show that the defendants had been in possession as they alleged. **GURAVI v. GURAVI 3 Bom., A. C., 170**

RANE v. RANE. 3 Bom., A. C., 178

102. — Settlement with one member of joint family.—Separate acquisition, Proof of.—The fact of a settlement being made with one member of a joint Hindu family does not negative the rights of other members to a participation in the property so settled; nor is it necessary for such other members, if living in commensality with the former as joint proprietors, to prove that they actually contributed money towards the acquisition of the property. **HUMO SOONDUREN DEBIA v. DOORGA DASS BRUTTACHARJEE. 16 W. R., 215**

103. — Distribution of land and tenants.—Partition of khoti estate.—Proof of partition.—Where the plaintiffs sued for the partition of a khoti estate, alleging that they and the defendants were joint proprietors thereof, and where the defendants admitted that the estate was originally joint, but set up that a partition had taken place more than a hundred and fifty years ago.—Held that the burden of proving that a partition had been made lay on the defendants, and that the mere distribution of land and tenants, such as is usual in the South Konkan, while a khoti estate continues to be held in coparcenary, in no way established a formal partition. **BARASHET BIN GOBINDSHET v. JIRSHET BIN YESSHET. 5 Bom., A. C., 71**

II

HINDU LAW—JOINT FAMILY—continued.**2. NATURE OF AND INTEREST IN PROPERTY.****(a) ANCESTRAL PROPERTY.**

104. — Ancestral property. Meaning of.—Immoveable property of father.—Ancestral property is not confined to such property as the father derives from his father or any ancestor, but means at least immoveable property derived from the father, however acquired by him. **RAJMOHUN GOSSAIN v. GOVINDMOHUN GOSSAIN [4 W. R., P. C., 47: 8 Moore's I. A., 81]**

105. — Property purchased by father as manager for himself and sons.—Purchase from profits of ancestral family.—Property purchased by a father in possession of ancestral property, as manager for himself and his sons, from the profits of such ancestral property, is itself ancestral property. **SHUDANUND MOHAPATTUR v. BONOMALSH DASS 6 W. R., 256**

106. — Joint ancestral property after distribution.—Character of shares of heirs.—Where the heirs of a deceased Hindu, by an arrangement with a third party who claimed to be an heir, distributed the property between them, such property after its distribution retained its character as ancestral property, and shares taken under the arrangement are not to be regarded as the self-acquired property of the heirs who took them. **MEWA KOONWER v. LALLA OUDH BEHARSH LALL [2 Agra, 311]**

107. — Ancestral property inherited from brothers.—Interest of sons in ancestral property.—S. died, leaving three sons and ancestral property, of which K., one of S.'s sons, took a third share. On the death of another of S.'s sons without issue, K.'s original share was increased by his deceased brother's share. Held that, according to the Mitakshara law, one of K.'s sons was entitled, during K.'s lifetime, to bring a suit to assert his right in the share of K., inherited from his deceased brother, such share being ancestral property. **GUNGGOO MULL v. BUNSEEDHUR [1 N. W., Part 6, p. 79: Ed. 1873, 170]**

108. — Moveable converted into immoveable property.—Mitakshara law.—Quare.—Whether ancestral property which was moveable when it descended, but has been converted into immoveable property, is not immoveable ancestral property for the purposes of the Mitakshara law. **SHAM NARAIN SINGH v. RUGHOOBURDIAL [I. L. R., 3 Cal., 506: 1 C. L. R., 348]**

109. — Interest of sons in ancestral property.—Mitakshara law.—Adopted sons.—Where money derived from ancestral estates is invested, before the adoption of a son, in the purchase of immoveable property which continues to exist at the time of the adoption, the adopted son has equally a vested right in that property as he has in any other similar immoveable property which the father had it in his power before the adoption to

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HINDU LAW—JOINT FAMILY—continued.**2. NATURE OF AND INTEREST IN PROPERTY—continued.****(a) ANCESTRAL PROPERTY—continued.**

Moveable converted into immoveable property—continued.

alienate, but which he did not alienate. **SUDANUND MOHAPATTUR v. SOORJOMONEE DAYEE**

[11 W. R., 436]

This case went to the Privy Council, but it was decided on a point which made the decision of this point unnecessary.

See SOORJOMONEE DAYEE v. SUDANUND MOHAPATTUR 12 B. L. R., 304

[20 W. R., 377]

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110. ———— Property once ancestral but alienated and re-purchased with separate funds.—Recovered ancestral property.—The principle of the Mitakshara law that, if a father recover ancestral property which had been taken away by a stranger and not recovered by the grandfather, he need not share it against his inclination with his sons, was held to apply *à fortiori* where the property would have been irrevocably lost to the family, but was re-purchased by a member who was at the time solely entitled, and who advanced the money out of his self-acquired property. **BOJAKKE SAKOO v. COURT OF WARDS** 14 W. R., 34

111. ———— Interest of son in joint family property.—Coparcenary rights.—Limitation.—A son during the life of his father has, as coparcener, a present proprietary interest in the ancestral property to the extent of his proper share; but beyond that he has vested in him no legal interest whatever whilst his father is alive. Except in respect of his coparcenary rights, a son is not in a different position as to the *corpus* of the ancestral property from that of any other relation who is an heir-apparent of the owner of property. Though the Limitation Act may have been decided to be a bar to a suit by the son for partition, his right as coparcener has not thereby been destroyed, and it may be that he is entitled to relief against the improper disposal by the defendant of more than his proper share of the property. **RAYACHARLU v. VENKATARAMANIAN** 4 Mad., 60

112. ———— Property acquired by litigation.—Self-acquired property devised by a father to his son.—Earnings of father as mill manager.—Property left by testator to be held moveable or immoveable according to its condition at his death.—Defendant's great-grandfather (*M.*) died in 1792, leaving a will, dated 1789, whereby he directed his property to be equally divided among his five sons, of whom *R.* (the grandfather of defendant), was one. The property became the subject of litigation, and was not divided until 1852, long after the death of *R.*, which took place in 1808. *R.*'s share was received in 1852 by the executors of his son, *N.* (defendant's father), who had died in 1848. *Held* that this property came to the defendant by inheritance, and

HINDU LAW—JOINT FAMILY—continued.**2. NATURE OF AND INTEREST IN PROPERTY—continued.****(a) ANCESTRAL PROPERTY—continued.**

Property acquired by litigation—continued.

was ancestral property and was not capable of being given or willed away by him. Further, that, as having regard to *M.*'s will, there was no apparent intention on the part of the testator to convert into money such of his property as consisted of lands and houses, the general rule of law applied, *viz.*, that the property must be held to be real or personal according to the actual condition in which it existed at the testator's death. All property acquired out of the income of ancestral property is itself ancestral, whether acquired before or after the birth of a son. In order to entitle a coparcener to hold, as property self-acquired by him, property which has been recovered by his exertions (*e.g.*, by litigation), such property must have been recovered from usurpers holding it adversely to the family; the coparceners must have abandoned their rights; and where such abandonment is a matter of inference, the coparceners, to whom it has been imputed, must have been in a position to sue. A son to whom his father leaves his self-acquired property by will takes the property under the will, and not by inheritance; and as property received by will is held by Hindu law to be received by gift, such property is self-acquired in the hands of the son, and is not subject to partition. The first defendant was sued by his son for partition. Some of the property in the defendant's hands consisted of his earnings as manager of a mill and of the investments of such earnings. The mill had been established in 1860, and the defendant bought thirty-nine shares out of the ancestral funds in his hands. He was appointed chairman of the company, and managed the mill for ten years without any remuneration. His management was very successful, and good dividends were declared every year from 1863. In 1870 he declined to work any longer without remuneration, and at a meeting of the shareholders he was appointed managing director, and was granted a commission on all sales effected by the company. *Held* that the commission so received by the defendant was his self-acquired property. Under the circumstances it might safely be inferred that he did not obtain the appointment of manager by the direct influence of the shares which he held in the company. The gratuitous services which he had for years rendered to the shareholders had influenced them in giving him the appointment, and such influence could not be said to have been created by the direct instrumentality of the ancestral property. In a suit for partition brought by a son against his father,—*Held* that the plaintiff was entitled to partition of the ancestral property as it subsisted at the date of the suit. A custom alleged to exist among the Kapoli Benia caste, according to which a son is not entitled to the partition of ancestral property in his father's lifetime and against his father's will,—*Held* not proved. **JAG-MOHANDAS MANGALDAS v. MANGALDAS NATHUBHOY** [I. L. R., 10 Bom., 528]

**HINDU LAW—JOINT FAMILY—con-
tinued.****2. NATURE OF AND INTEREST IN
PROPERTY—continued.****(a) ANCESTRAL PROPERTY—continued.**

113. ——— Profits in business where capital is ancestral property.—*Profits earned by loans and by commissions.*—Four brothers of the Cutchi-Memon community carried on trade with capital inherited from their father. Large profits were made in the course of business. It was alleged that some of the profits were made by means of borrowed capital, and some arose out of a commission business in which the capital of the firm was not used at all; and it was contended that such profits could not be considered as ancestral funds. It appeared, however, that the entire business was carried on by the same firm. There were common books, common expenses, and a common staff. The borrowed money was put into the general cash with the original capital. *Held* that the whole property was ancestral. Augmentations, which blend, as they accrue, with the original estate, partake of the character of that estate. Moreover, the loans in question and the extension of business, to which they led, might have produced heavy losses instead of great profits, and the family property would have been liable to debts so incurred. The family property, being thus subject to liabilities arising from the loans, was entitled to participate in any benefits resulting from them. **MAHOMED SIDICK v. AHMED. ABDULA HAJI ABDSTAR v. AHMED** **I. L. R., 10 Bom., 1**

114. ——— Property bona fide disposed of before birth of son.—*Rights of sons.*—*After-born son.*—*Son born subsequently to adoption by father and partition.*—According to Hindu law, sons acquire rights only in the property which belonged to their father at the time of their birth, and have no legal claim to property of which a *bona fide* disposition, effectual as against their father, had been made long before they were born. The right of an after-born son to share as a coparcener divided property depends upon his mother being pregnant with him at the time of a partition. The father of the plaintiffs adopted the third defendant. After the adoption the wife of the father gave birth to a son. Thereupon the father effected a division of the property with the adopted son, and gave the latter a larger share than he was entitled to receive by law. The father married a second wife, and the plaintiffs were the issue of the marriage. *Held* that the plaintiffs were not entitled to a partition of any portion of the property which fell to the share of the adopted son. **YEKNYAMIAN v. AGNISWARIAH** **4 Mad., 307**

115. ——— Interest of son in ancestral property.—*Mitakshara law.*—According to the Mitakshara law, sons have a vested interest in ancestral property, which interest is saleable at any time in satisfaction of claims against them. **GOOE SURUZ DOSS v. RAM SURUN BRUKUT** **5 W. R., 54**

And also to the profits of ancestral property **SUDANUND MOHAPATTUR v. SOORJOO MONKE DAYE** **[11 W. R., 436]**

**HINDU LAW—JOINT FAMILY—con-
tinued.****2. NATURE OF AND INTEREST IN
PROPERTY—continued.****(a) ANCESTRAL PROPERTY—continued.****Interest of son in ancestral property—
continued.**

116. ——— Ancestral im-
moveable property.—*Rights of father and son.*—*Suit by father to eject son.*—The sons in an undivided Hindu family, although they have a proprietary right in the paternal and ancestral estate, have not independent dominion. Where, therefore, the plaintiff sued to eject the defendant, his son, from a portion of a house, partly self-acquired by the plaintiff and partly ancestral property, in which the defendant was living against the plaintiff's will, the Court decreed the claim. **BALDEO DAS v. SHAM LAL**

[I. L. R., 1 All., 77]

(b) ACQUIRED PROPERTY.

117. ——— Property inherited through mother.—*Succession of female to impartible zamindari.*—Property inherited through a mother is not "self-acquired" as between her son and grandson. **MUTTAYAN CHETTI v. SANGILI VIRA PANDIA CHINSA TAMBIAH** **I. L. R., 3 Mad., 370**

118. ——— Property acquired from father-in-law on marriage.—*Liability to partition.*—Property acquired from a father-in-law is self-acquired property and therefore not liable to be shared in by a brother. **BEHAREE LAL ROY v. LALL CHAND ROY** **25 W. R., 307**

119. ——— Father's interest in self-acquired property of son.—*Separation.*—The doctrine of Hindu law that a father takes a share in his son's self-acquired property applies only to cases of families in joint estate, but not where separation in estate has taken place. **ANUND MOHUN PAUL CHOWDHRY v. SHAMASOONDURI** **[W. R., 1864, 352]**

120. ——— Property acquired by member while drawing income from family.—Property acquired by a Hindu while drawing an income from his family is liable to partition. **RAMA-SHESHAIAYA PANDAY v. BHAGAVAT PANDAY** **[4 Mad., 5]**

121. ——— Property acquired by one member in trading.—*Education at expense of joint family.*—*Quare.*—Where a member of a joint Hindu family subject to the Mitakshara law has received a general education at the expense of the joint family funds, but is shown to have derived no material wealth from those funds, does property which he afterwards acquires by the exercise of his industry and intelligence in successful trading become joint in the contemplation of the Hindu law? Decisions of the Indian Courts bearing on this question observed on. **PAULIEM VALOO CHETTI v. PAULIEM SOOBYAR CHETTI** **I. L. R., 1 Mad., 252**
[L. R., 4 I. A., 109]

HINDU LAW—JOINT FAMILY—continued.**2. NATURE OF AND INTEREST IN PROPERTY—continued.****(b) ACQUIRED PROPERTY—continued.**

122. ——— Gains of science.—Educational family expense.—Gains of science acquired at the family expense, and whilst the acquirer is receiving a family maintenance, are liable to partition, and upon the death of the acquirer form part of the family property, and do not pass to his widow. *BAI MANOHA v. NAROTAMDAS KASHIDAS*

[6 Bom., A. C., 54]

123. ——— Self-acquired property.—Partition.—The acquisition of a distinct property by a member of an undivided Hindu family without the aid of joint funds is his self-acquired property, and is not subject to partition; but the improvement or augmentation of the family property by the exertions of one of the members is subject to division. Hindu law texts regarding gains of science establish it as a rule of Hindu law that the ordinary gains of science are divisible, when such science has been imparted at the family expense, and acquired while receiving a family maintenance; but that it is otherwise when the science has been imparted at the expense of persons who are not members of the acquirer's family. When the Hindu texts speak of the gains of science, they intend the special training for a particular profession which is the immediate source of the gains, and not the general elementary education which is the stepping-stone to the acquisition of all science. Consequently, the property acquired by a Subordinate Judge who had received elementary education at the family expense, but a knowledge of law and judicial practice without such aid, is impartible. The ruling of the Privy Council in *Luximon Rao Sudaseo v. Mullar Rao Bajee, 2 Knapp, 60*, interpreted to mean no more than the law as now settled, *viz.*, that when there is ancestral property by means of which other property may have been acquired, then it is for the party alleging self-acquisition to prove that it was acquired without any aid from the family estate. *Bai Manohar v. Narotamdas, 6 Bom., 1*, distinguished. Dictum of MITTER, J., in *Dhunoookharree v. Gunput Lal, 11 B. L. R., 201; 10 W. R., 122*—that the Hindu law nowhere sanctions the contention that the acquisition of a member of a Hindu family who has received education from the joint estate is liable to partition—commented on as not strictly correct. *LAKEHMAN MAYARAM v. JAMNABAI. I. L. R., 6 Bom., 225*

124. ——— Prostitution.—The ordinary gains of science are divisible when such science has been imparted at the family expense and acquired while receiving a family maintenance. *Secus*, where the science has been imparted at the expense of persons not members of the learner's family. The trade of prostitution is recognised and legalised by Hindu law. *CHALAKONDA ALASANI v. CHALAKONDA RATNA CHALAM. 2 Mad., 56*

125. ——— Income derived from prostitution.—Dancing girl.—Education in dancing

HINDU LAW—JOINT FAMILY—continued.**2. NATURE OF AND INTEREST IN PROPERTY—continued.****(b) ACQUIRED PROPERTY—continued.**

Income derived from prostitution—continued.

and music.—Property acquired with income derived from prostitution by a Hindu dancing girl who has received the ordinary education in music and dancing is not partible. *BOOLOGAM v. SWORNAM*

[I. L. R., 4 Mad., 330]

126. ——— Professional earnings of vakil.—Self-acquired property.—Gains of science.—Upon the question whether the professional earnings of a vakil were generally his self-acquisition and impartible.—*Held*, by KINDERSLEY, J., that the question must be upon the facts in each case, how far the common family means were instrumental in enabling the professional man to earn the property which is claimed as subject to partition. The fair presumption is that such attainments as are usually possessed by a vakil have been acquired with the assistance of the family means. *By HOLLOWAY, J.*, that the ordinary gains of science by one who has received a family maintenance are certainly partible. Moreover, within the meaning of the authorities, a vakil's business is not matter of science at all. *DUEVASULU GANGADHARUDU v. DUEVASULA NARASAMMAH*

[7 Mad., 47]

127. ——— Partnership property.—Agreement allowing members to draw separately from assets of firm.—Self-acquired property.—Where the relation between the plaintiff and the defendant (two brothers) was not strictly that of members of a joint undivided Hindu family, since although they were joint as to their general concerns, and in some sense joint as members of a family, yet that relation was qualified by the provision contained in a family arrangement whereby each member of the family might take out and use assets derived from a partnership firm for the benefit of his sole and separate speculations. *Held* that the plaintiff was not entitled to throw his own and his brother's acquisitions into hotchpot and to claim an equal division of them. The arrangement being of such an extraordinary character as to leave it in the power of each member to draw to an unlimited extent upon the assets of the firm, the Privy Council declined to extend the operation of such an agreement one iota beyond its terms, and were therefore of opinion that the High Court was right in drawing a distinction between pledging the credit of the firm and drawing out money actually belonging to the firm. *NURSINGH DOSS v. NARAIN DOSS. 26 W. R., 17*

Affirming decision of High Court in S. C.

[8 N. W., 217]

3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER.

128. ——— Rights of members of family.—Position of manager.—Agent.—Trustee.—Members of a Hindu family, with vested interests in

HINDU LAW—JOINT FAMILY—continued.**3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—continued.****Rights of members of family—continued.**

their joint property, choosing to continue in a state of commensality and joint fruition, do not possess individually any several proprietary right other than an alienable right to call for partition. The karta of a joint Hindu family in general is the mere mouthpiece of the family, and not an agent with delegated authority in a fiduciary and accountable relation to the rest of the family. As long as a member of such a family is a minor, the karta is in the position of a trustee for him of the joint property to the extent of his share in it, and is liable to account for it to him when the trusteeship ceases. **CHUCKUN LALL SINGH v. PORAN CHUNDER SINGH** . . . **9 W. R., 483**

129. ———— Manager, Liability of, to account.—Partnership, Distinction between Hindu family and.—The manager of a joint Hindu family is not, by reason of his occupying that position, bound to render an account to the other members of the family. There is no analogy in this respect between a joint Hindu family and a partnership. Where it was arranged amongst the members of a joint Hindu family that the accounts of a banking business carried on by them should be kept on the understanding that the profits, when realised, should be divided amongst the individual members in certain proportions, and that the expenses of each member should be credited and charged in the name of each member,—*Held* that this was in the nature of a partnership, and an account was decreed. **RANGANMANI DAS v. KASINATH DUTT**
[**3 B. L. R., O. C., 1: 13 W. R., 76, note**]

130. ———— Suit for account during minority of members.—A managing member of a joint Hindu family is bound to render an account of his management to his co-sharers, and he is liable to a suit if he refuses to do so. And such suit will lie even if the parties suing were minors during the period for which the account is asked. **ABHAY-CHANDRA ROY CHOWDREY v. PYRIMOHUN GOHO**
[**5 B. L. R., 347**]

S. C. OSHOY CHUNDER ROY CHOWDREY v. PYRIMOHUN GOHO. **13 W. R., F. R., 75**

131. ———— Suit for account of portion of joint property.—One member of a joint Hindu family sued another who was the manager, for a moiety of two items pertaining to the ancestral estate, which she alleged that the defendant had misappropriated. *Held* the form of the suit was wrong, and that the plaintiff should have sued for an account of the whole joint family property. **NOWLASO KOORBER v. LALLJEE MODI** . **22 W. R., 202**

132. ———— Right of excluded minor to account.—Where an infant has been ejected by the manager of the joint Hindu family from the family house, and excluded from enjoyment of the family property, the manager is bound to account to the infant for mesne profits from the date

HINDU LAW—JOINT FAMILY—continued.**3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—continued.****Manager, Liability of, to account—continued.**

of his exclusion. The rule which limits the right of members of a Hindu family seeking partition to a division of the family property existing at the date of the division not applying. **KRISHNA v. SUBBANNA**
[**L. L. R., 7 Mad., 564**]

4. DEBTS AND JOINT FAMILY BUSINESS.

133. ———— Debt incurred by manager.—Presumption of debt being on joint account.—Though property of a joint Hindu family is *primæ facie* joint, yet as there is nothing to prevent an individual managing member from contracting debts on his own account, there is no presumption that a debt contracted by him is joint. **SUNKUR PERSHAD v. GOVRY PERSHAD** . . . **I. L. R., 5 Calc., 321**

134. ———— Duty of purchaser from manager of family.—Minor members.—A debt incurred by the head of a Hindu family residing together, under ordinary circumstances is presumed to be a family debt; but when one of the members is a minor, the creditor seeking to enforce his claim against the family property must show that the debt was contracted *bond fide* and for the benefit of the family. **HANMOOMANGERSAUD PANDAY v. BABOOES MUNRAJ KOONWERSE, 6 Moore's I. A., 398, followed.**
TANDAVARXA MUDALI v. VALLEY ANNAL
[**1 Mad., 396**]

135. ———— Liability of members for separate debts of deceased brother.—Survivorship.—*P.*, an undivided Hindu coparcener, died on the 7th August 1874, leaving him surviving a brother *C.*, and a son *N.* *N.* subsequently died on the 2nd July 1875. In a suit brought by plaintiff against *C.*, on a bond executed by *P.* as surety for one *E.*,—*Held* that the family property, which on *N.*'s death became vested by survivorship in *C.*, was not in his hands liable for the separate debts of *P.* or *N.* **NARSINBHAT BIN BAPUBHAT v. CHENAPA BIN NINGAPA** . . . **I. L. R., 2 Bom., 375**

136. ———— Debt incurred by joint family.—Duty of purchaser.—Reasonable enquiry.—A person lending money on the security of the property of an undivided Hindu family is bound to make enquiries as to the necessity that exists for such loan. If he lends the money after reasonable enquiry, and *bond fide* believing it will be properly expended, he is not bound to see to the application of it. The rule is the same whether all the members of the family are adults or minors. Authorities bearing on the question of the *onus probandi* in such cases cited. **GANE BHIVE PARAS v. KANE BHIVE**
[**4 Bom., A. C., 169**]

137. ———— Debts incurred for family purposes.—Evidence of legal necessity.—*N.*, *G.*, and *H.* were three brothers living together as a joint Hindu family. After the death of *N.* and *G.*, decrees

**HINDU LAW—JOINT FAMILY—con-
tinued.****4. DEBTS AND JOINT FAMILY BUSINESS—
continued.****Debts incurred for family purposes—
continued.**

were obtained against *N.*'s widow, and satisfied by her in respect of moneys borrowed by *N.* and *H.* as the managing members of the family and spent for family purposes while *G.*'s widow was living in the family. In a suit by *N.*'s widow for contribution against *G.*'s widow,—*Held* that, though no legal necessity had been shown for borrowing, the defendant was bound to pay her share, as the money had been spent for family purposes while she was living in the family. *BIMALA DEBI v. TARASUNDARI DEBI* [6 B. L. R., Ap., 101: 14 W. R., 480]

138. — Suit by one member for debt due to family firm.—*Partnership.*—In a suit for money lent, brought by the father of a joint Hindu family who carried on jointly an ancestral money-lending business, the plaintiff stated, in examination, that he had ceased to take an active part in the management of the affairs of the firm, and that the control of its business was in the hands of his sons, whom he described as "maliks." *Held* that, under the circumstances, the plaintiff could not maintain the suit in his individual capacity, and without joining his sons as plaintiffs with him, his sons being his partners in the ancestral business, and he not being the managing member or proprietor. *JUGAL KISHORE v. HULABI RAM* . I. L. R., 3 All., 264

139. — Joint ancestral business, Nature of.—*Partnership.*—*Manager of joint family.*—*Power of.*—An ancestral trade descends, like other Hindu property, upon the members of an undivided family, and the manager of such family can on behalf of the family enter into copartnership with a stranger. In carrying on such a trade, infant members of the family will be bound by the acts of the manager, which are necessarily incident to, and flowing out of, the carrying on of that trade. The manager can pledge the property and credit of the family for the ordinary purposes of that trade, and third persons dealing *bona fide* with such manager are not bound to investigate the status of the family, minor members being bound by the necessary acts of the manager. By necessary acts are meant such as are necessary for the material existence of the undivided family or the preservation of the family property: and a compromise between copartners of partnership accounts, and differences by a transfer and division of partnership property, is not such a necessary act, but is one which is left to be dealt with by the ordinary rules of law, and one which must be shown clearly to be for the benefit of the infant members before the compromise will be enforced. The avoidance of a suit to take partnership accounts is not sufficient of itself to render a compromise necessary for the preservation of family property or beneficial to a minor member. A copartner dealing with an undivided Hindu family, is, with reference to its component members, in the same position that a partner according to English law is placed in with respect to his copartners and their

**HINDU LAW—JOINT FAMILY—con-
tinued.****4. DEBTS AND JOINT FAMILY BUSINESS—
continued.****Joint ancestral business, Nature of—
continued.**

representatives. *RAMIAL THAKURSIDAS v. LAKHMI-CHAND MUTHIRAM* . . . 1 Bom., Ap., 51

140. — *Mitakshara law.*—*Debts incurred by manager of joint family in trading.*—A joint family property acquired and maintained by the profits of trade is subject to all the liabilities of that trade. *Ramial Thakursidas v. Lakmichand*, 1 Bom., Ap., 51, followed. *JOHUR-RA BIBEN v. SRENGOPAL MISSEB* [I. L. R., 1 Cal., 470]

141. — *Business carried on for benefit of infants.*—*Debts incurred by guardian.*—*Liability of infants.*—*Contract Act, sec. 247.*—Where the ancestral trade of a Hindu was carried on after his death for the benefit of his infant children by their guardian, and debts were incurred by the firm in the course of business,—*Held* that the guardian of a Hindu minor is competent to carry on an ancestral trade on behalf of the minor, and that, following the analogy of the rule laid down by section 247 of the Contract Act, as to the liability of a minor admitted by contract into a partnership business, the minor is not to be held personally liable for the debts incurred in such trade, but that his share therein is alone liable. *JOYKISTO COWAR v. NITYANUND NUNDY* [I. L. R., 3 Cal., 788: 2 C. L. R., 440]

142. — *Power of managing member to bind members of partnership.*—Adult members of an undivided Hindu family governed by the law of the Dayabhaga, who have an interest in a family business carried on by the managing member of the family, and who are maintained out of the profits of such business, must, in the absence of evidence, be taken to possess the knowledge that the business might require financing, and to have consented to such financing. Where, therefore, a managing member of such a family, in carrying on the family business, obtains an advance necessary for the purposes of the business by pledging the joint family property, the mortgage is binding on all the members of the partnership. *BEMOLA DOSSEB v. MOHUN DOSSEB* [I. L. R., 5 Cal., 792: 6 C. L. R., 34]

143. — *One member as agent of others.*—*Partnership.*—As between the members of a joint family, any one or more may be authorised by the rest to act as their agent or agents in any business transaction; but when a joint family or any members of it carry on a trade in partnership, and contract with the outside public in the course of that trade, they have no greater privileges than any other traders. If they are really partners, they must be bound by the same rules of law for enforcing their contracts in Courts of law as any other partnership. *RAMSEBUX v. RAMLALL KOONDOD* [I. L. R., 6 Cal., 815: 3 C. L. R., 457]

HINDU LAW—JOINT FAMILY—continued.**4. DEBTS AND JOINT FAMILY BUSINESS—continued.**

Joint ancestral business, Nature of—continued.

144. ——— *Business carried on by one member as manager.—Liability of all as joint owners.—Ancestral trade and ordinary partnership, Difference between.—Contract Act, IX of 1872.*—J., the father of the three defendants, established a trading firm in 1865 under the name of J. H. He and his three sons lived together as a joint Hindu family. J. died in 1872, and the business was continued under the same name by S. as the eldest brother and manager of the family. The youngest of the three brothers was a minor at the date of his father's death. The plaintiff sued the three brothers to recover money due on an account signed by S. in the name of the firm. The second defendant contended that he had never participated in the property of the business; that he had not resided at the family residence for six years; that he could not be considered a partner of the firm, and, therefore, was not liable to the plaintiff. *Held* that he could not repudiate a liability arising out of the ordinary transactions of the firm. During his father's life he was joint owner, and after his father's death he acquiesced in the continuance of the firm under the same name, and ostensibly, therefore, with the same constitution. He had done no act to divest himself of his share. He had given no notice of repudiation, and made no partition, and there was nothing to prevent him from demanding his share of the partnership, or claiming to share in the profits. There was, therefore, nothing to exempt him from the ordinary rule of Hindu law, which makes every member of a united family liable for debts properly incurred by a manager for the benefit of the family. The debt due to the plaintiff for goods supplied to the shop was properly incurred in the course of the ordinary transactions of the firm, and presumably, therefore, for the benefit of all the joint owners of the firm. The rights and liabilities arising out of joint ownership in a trading business created through the operation of Hindu law between the members of an undivided Hindu family cannot be determined by exclusive reference to the Contract Act (IX of 1872), but must be considered also with regard to the general rules of Hindu law which regulate the transactions of united families. An ancestral trade may descend, like other inheritable property, upon the members of a Hindu undivided family. The partnership so created or surviving has many, but not all, of the elements existing in an ordinary partnership. For example, the death of one of the partners does not dissolve the partnership; nor, as a rule, can one of the partners, when severing his connection with the business, ask for an account of past profits and losses. **SAMALBHAI NATHAUBHAI v. SOMESHWAR MANGAL** . . . I. L. R., 5 Bom., 38

145. ——— *Payment of debt.—Debtor of undivided family.—Release.—Manager of family.*—The debtor of an undivided Hindu family is not justified in paying his debt to the eldest member of

HINDU LAW—JOINT FAMILY—continued.**4. DEBTS AND JOINT FAMILY BUSINESS—continued.**

Payment of debt—continued.

the family, unless such eldest member be also the manager of the undivided family. If there is no manager the debtor should obtain a release from all the members of the undivided family. **SANGAPPA BIN CHANBASAPPA v. SAKHBANNA BIN KENGEDAPPA** [7 Bom., A. C., 141

5. POWERS OF ALIENATION BY MEMBERS.**(a) MANAGER.**

146. ——— *Power of manager.—Position of manager of family.—How far his acts bind other members.*—A Hindu family is regarded as a corporation whose interests are necessarily centred in the manager, the presumption being that the manager is acting for the family unless the contrary is shown. Before the introduction of the Civil Procedure Code this was so equally with regard to litigation as to other transactions, and it was not then obligatory, or even customary, for a Hindu manager to set forth that he sued in a representative character (as now required by the Code, section 50), or to add the co-owners as parties to the suit (as required by English law). **GAN SAVANT BAL SAVANT v. NARAYAN DHOND SAVANT** . . . I. L. R., 7 Bom., 467

147. ——— *Transactions of, liable to be questioned.—Fraudulent contract.*—Every member of a family of proprietors who has an interest in the estate has a right to question any transactions entered into by the elder member as manager whereby the former would be defrauded. The right of a person defrauded by a contract between a manager and a third party is to have the contract altogether rescinded. **RAVJI J. SHARANGPANI v. GANGADHARBHAT** . . . I. L. R., 4 Bom., 29

148. ——— *Money expended in improvement or repair.—Agreement by one coparcener in respect of expenditure of family property.*—While the members of a Hindu family enjoy in common undivided property, money expended in its improvement or repair is considered as spent on behalf of all the members alike, and all have the benefit of the outlay when a division takes place. There is no rule of law precluding one member of an undivided Hindu family, though living together, from entering into an agreement with his coparceners in respect of the expenditure on family property, and repayment of self-acquired funds; and such an agreement is rendered more reasonable and probable where portions of the family property are occupied and enjoyed by each of the members living separately. **MUTTASVAMI GAUNDAN v. SUBBIRAMANYA GAUNDAN** . . . 1 Mad., 309

149. ——— *Discretion of managing member to expend moneys for improvements.—Mortgage for improvements to family property.*—Where a mortgagee of a house, the ancestral property of a Hindu family, advanced money on the representation that it was required to complete improve-

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tinued.****5. POWERS OF ALIENATION BY MEMBERS
—continued.****(a) MANAGER—continued.****Discretion of managing member to ex-
pend moneys for improvements—con-
tinued.**

ments in the family house and to pay a mortgage-debt carrying a higher rate of interest which had been contracted to make those improvements.—*Held* that the sons of the mortgagor were bound by the mortgage. In the case of improvements of the family property made by the managing member of a Hindu family where the sum spent was large, but the discretion of the managing member was exercised *bond fide* and for the benefit of the estate, and the family had this benefit, such discretion should not be narrowly scrutinised. *Saravana Tevan v. Mutlayi Ammal*, 6 Mad., 871; and *Hanoomapersaud Panday v. Munraj Koonveree*, 6 Moore's I. A., 898, discussed and followed. *RATNAM v. GOVINDARAJULU*. I. L. R., 2 Mad., 389

150. ——— Costs incurred by manager in protecting property of joint family.—Liability of shares of members of joint family for.—Pending an appeal, the plaintiff, who was the appellant, died, leaving one adult and four minor sons. The adult son prosecuted the appeal, which was dismissed, as was the suit in the Court below, with costs. The decrees for costs were sold by the defendant to a third person, who caused certain property which belonged to the estate of the plaintiff to be sold in execution. *Held*, in a suit by the minor sons to recover possession of the shares in the property sold, that as all the sons were interested in the litigation all their shares were liable for the costs, and the suit was dismissed. *JUTADHARI LAL v. RUGHOSHER PERSAD* [I. L. R., 9 Cal., 508; 12 C. L. R., 255]

151. ——— Alienation by manager.—Sale by manager of joint family.—The manager of an undivided Hindu family can sell his own share of the family property only. *DAMODHAR VITHAL KHARE v. DAMODHAR HARI SOMANA*, 1 Bom., 183

KOYLASHESUR BOSE v. NARAINER DOSSEE [10 W. B., 308]

152. ——— Acquiescence.—An alienation made by the managing member of a joint Hindu family cannot be questioned by another member if he stands by and sees to the application of the purchase-money for the benefit of the whole family, without refusing to participate in it. *WHITE v. BISH-TO CHUNDER BOSE*. 2 Hay, 567

153. ——— Mortgage by member of Hindu family.—A member of an undivided Hindu family has a right to mortgage his own share of the family estate, and, if he be acting as representative and manager of the undivided family, to mortgage the interests of the other members of the family therein on any common family necessity, or for the common benefit and use of the undivided family. *GUNDO MAHADEV v. RAMBHAT BIN BHAUBHAT* [1 Bom., 39]

**HINDU LAW—JOINT FAMILY—con-
tinued.****5. POWERS OF ALIENATION BY MEMBERS
—continued.****(a) MANAGER—continued.****Alienation by manager—continued.**

154. ——— Purchaser from member of joint family.—If a person dealing with a Hindu representing himself to be the representative and manager of an undivided family, comprising infant members, can show that, after reasonable enquiry, he believed in good faith that the person so representing himself was entitled to act, and was acting for the family, and that the transaction entered into with him by such manager was entered into for some common family necessity, or for the benefit of the infants, such act of the manager is valid and binding on the minor members of the family. *TRIMBAK AWANT v. GOPALSHET BIR MAHADESH MAHADU*

[1 Bom., 27]

155. ——— Power of manager to alienate or charge shares of other members of family.—Necessity.—Onus probandi.—It is a firmly settled rule of Hindu law, resting upon the authority of the Mitakshara and repeated judicial decisions, that a managing coparcener has not the capacity to alienate or charge the share of his minor coparcener in immoveable ancestral property except for the purpose of providing for some family need or the performance of an indispensable religious duty, or except the alienation or charge be for the benefit of the joint estate; and in every case to which the rule is applicable, the onus of showing either by direct or presumptive proof a *prima facie* case in support of the existence of the condition necessary to give the legal capacity to make the disputed disposition, lies upon the party claiming to have acquired under it a title to the minor's share of the property. Upon the question of what is the amount of proof which the law renders necessary to discharge that burden of proof.—*Held* that where the dispute as to the validity of a sale or mortgage of family property is with the person to whom it was made, and the pecuniary consideration for it has not been advanced for the purpose of discharging an antecedent charge on the property or an old debt incurred by an ancestor; the case of the vendee or mortgagee, as regards the existence of a family need or sufficient beneficial purpose requiring the advance of the consideration-money, must be established by positive proof. But that between a *bond fide* sale or mortgage for an advance made to pay off a pre-existing mortgage claim or an unsecured debt of an ancestor, and one not made for that purpose, there was this distinction to be observed, that the burden of establishing by direct proof that such prior claim or debt was incurred for a proper family purpose is not cast upon the vendee or mortgagee. He is only required to show this presumptively. But to do so it is incumbent on him to give proof not only of the consideration-money for the sale or mortgage having been *bond fide* advanced in discharge of an antecedent debt, but also of an enquiry productive of results which warranted his reasonably believing that such debt was a family obligation, and the sale or

**HINDU LAW—JOINT FAMILY—con-
tinued.****5. POWERS OF ALIENATION BY MEMBERS
—continued.****(a) MANAGER—continued.****Alienation by manager—continued.**

mortgage a prudent arrangement for its discharge.
SARAVANA TEYAN v. MUTTAYI AMMAL 6 Mad., 371

156. ——— Mortgage of joint family property.—Powers of karta.—Acknowledgment by karta or by executor under Hindu will.—Acquiescences.—H., a Hindu, died, leaving two adult and two minor sons, and having made a will, or anumati-patra, addressed to his two eldest sons, L. and G., whom he thereby appointed malik mukhtars of the whole of his estate with full powers of management. He directed them to maintain his widow and minor sons, and to pay the marriage expenses of the latter out of the joint estate; and further directed them to pay his liabilities, and, if necessary, to raise money for that purpose by sale or mortgage; the necessary documents to be signed by L. and G., "the names of the infants being signed by you as guardians and executors." In case of the death of either L. or G., the will provided that all the powers of the executors should be vested in the survivor; the minors to have the same powers upon attaining majority. The will further provided that the executors should, when the minors came of age, "make over to them with explanation the share of each;" and that the four sons should take the property in equal shares. L. died after his father, leaving a widow, and having made a will, whereof he appointed G. executor, and G. subsequently obtained a certificate under section 7, Act XL of 1858, in respect of the property of his minor brothers. Thereafter G., by a deed in the English form, which was executed by him alone "as executor of H.," and also "as executor of L.," mortgaged a portion of the property to the plaintiff to secure Rs. 847-3-3. Of this sum Rs. 947-3-3 were advanced to G. at the time of the mortgage, and were applied by him for the benefit of H.'s estate, Rs. 1,000 were advanced to pay a debt due from L. to third persons, the remainder being in respect of debts of H., all of which, however, with the exception of one debt of Rs. 100, were barred by the law of limitation. In a suit by the mortgagees for an account and sale, or foreclosure of the mortgaged property, it appeared that one of the minors had attained his majority when the mortgage was executed, and the other some years thereafter, and that both had been informed of the mortgage several years before the suit, and had then raised no objections. No question as to the effect of the limitation law on the mortgage was raised on the pleadings or at the trial. **Held by MARKEBY, J., that although the mortgage was not executed in accordance with the will of H., the younger sons had stood by and had taken the benefit of the transaction, and could not, therefore, question it. A member of a joint Hindu family is bound, when he comes of age, to make himself acquainted with the acts during his minority of the manager, and to express his dissent at once if he disapprove of such acts. No evidence having been offered as to L.'s estate when the mortgage was exe-**

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tinued.****5. POWERS OF ALIENATION BY MEMBERS
—continued.****(a) MANAGER—continued.****Alienation by manager—continued.**

cuted, or that L.'s widow knew of the mortgage, the suit must be dismissed as against her. **Held on appeal, by COUCH, C. J., and PONTIFEX, J.**, that debts by Hindu law being a charge upon the estate of the debtor, and the intention of H., as shown by the provision in his will for the maintenance of his widow and minor sons, being that the family should for a time continue to be joint, no charge or trust was created by the clause in H.'s will for payment of his debts, and therefore the fact that, in executing the mortgage, G. professed to act under the will and not as karta, did not invalidate the mortgage. For the same reason, the clause for payment of debts could not prevent the operation of the law of limitation. The manager of a joint Hindu family, or the executor of a Hindu will, has no power by acknowledgment to revive a debt barred by the law of limitation, except as against himself. G., as karta of the joint family, could not make a valid mortgage of L.'s share separately from the shares of the other members of the family; his estate therefore was liable to pay the plaintiff the Rs. 1,000 borrowed to pay L.'s debt, and his representatives could claim to be repaid from L.'s estate. **GOPALNARAIN MOZOOMDAR v. MUDDOMUTTY GUPTER. SHOSHNEERHOOSUN MOZOOMDAR v. MUDDOMUTTY GUPTER. MUDDOMUTTY GUPTER v. RAMASOONDREY DOSSEE . . . 14 B. L. R., 21**

157. ——— Mortgage of joint family property.—An alienation made by a managing member of a joint Hindu family is not binding upon his adult co-sharers unless it is shown that it was made with their consent, either express or implied. In cases of implied consent it is not necessary to prove its existence with reference to a particular instance of alienation, but a general consent may be deducible in cases of urgent necessity, from the very fact of the manager being intrusted with the management of the family estate by the other members of the family; and the latter entrusting the management of the family affairs to the manager must be presumed to have delegated to him the power of pledging the family credit or estate when it is impossible or extremely inconvenient for the purpose of an efficient management of the estate to consult them and obtain their consent before pledging such credit or estate. **MILLER v. RUNGA NATH MOULICK**

[I. L. R., 12 Cal., 389]

158. ——— Mitakshara law.—Ancestral property.—A., the karta of a Hindu family governed by the Mitakshara law, living with his two sons, B. and C., in joint enjoyment of the family property, took a loan from certain persons, and executed to them a mortgage bond on the joint family property. The bond-holders obtained a decree on their bond, in execution of which they caused the property to be sold, and themselves became the purchasers. C. was a minor at the time of the alienation. In a suit by B. on behalf of himself and C.

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(a) MANAGER—continued.****Alienation by manager—continued.**

to set aside the alienation, on the ground that it had been made without their consent and without legal necessity, the Court found that *B.* had taken such a part in the transactions leading to the alienation as made him a consenting party to it; that there was no legal necessity for the alienation; and that *C.* being a minor, the alienation was not the joint act of all the members of the family. *Held* that, under these circumstances, the alienation failed to convey to the purchasers either the entirety of the property or any share or interest in it, and *C.* was entitled to have it set aside. In ordering the alienation to be set aside, the Court, in the interest of the minor son, and favouring the equity the purchasers clearly had against *A.* and *B.*, directed that, on recovery of the property, it should be held and enjoyed in defined shares, and that the shares of *A.* and *B.* should be jointly and severally subject to the lien thereon of the purchasers for the repayment of the loan to *A.* So long as the members of a Hindu family under the Mitakshara law are living in the joint enjoyment of the family property, without having come to an actual partition among themselves of that property, or an ascertainment and partition of their rights in it, no member of the family has any separate proprietary right therein which he can alienate or encumber. The property can only be alienated by the joint act of all the members, express or implied; or, in case of justifiable family necessity, by the karta alone. **MAHABHAR PERSHAD v. RAMYAD SINGH**

[12 B. L. R., 90: 20 W. R., 192]

150. *Attachment and sale of the interest of manager whose manager is not the father of other co-sharers.—Tenants in common.*—*N.* and *H.* (uncle and nephew) were members of an undivided Hindu family. On the 22nd April 1872, *N.* mortgaged the land in dispute (part of the family property) to *J.*, who, on the 10th June 1876, obtained a decree against *N.* on the mortgage, and put up the land for sale in execution. It was purchased by the defendant on the 26th October 1876. *N.* and *H.* had previously sold the land to the plaintiff by a registered deed, dated the 30th June 1876. On the 28th September 1877, the plaintiff sued the defendant for possession of a half share of *H.* in the land. The Subordinate Judge awarded the plaintiff's claim, holding that his purchase was *bona fide*, and that the share of *H.* was not bound by the mortgage executed by *N.* to *J.* In appeal the District Judge thought it unnecessary to consider whether the plaintiff's purchase was *bona fide*, and whether *H.* was liable for the mortgage debt, inasmuch as the interest of *N.* alone had been sold under the mortgage decree, and the interest of *H.*, therefore, was not affected by the sale. He affirmed the decree of the first Court, with the variation that the plaintiff and defendant were jointly entitled to the possession of the land. In second appeal it was contended for the defendant that the District Judge ought to have

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(a) MANAGER—continued.****Alienation by manager—continued.**

found whether the mortgage-debt contracted by *N.* was for a family necessity, and therefore binding on *N.*, and whether the sale to the plaintiff was *bona fide*. *Held* that the plaintiff was entitled to recover. The defendant had only purchased that which was seized and sold in execution of the decree, *viz.*, the right, title, and interest of *N.* in the land, and *H.*'s share was not affected by the sale. *Held*, also, following *Maruti Narayan v. Lilachand*, 1 L. R., 6 Bom., 564, that it was not competent for the Court in this suit to consider the question whether the loan contracted by *N.* in 1872 was contracted by him as manager for a necessary family purpose so as to bind the share of *H.* in the property. *Held* also, that if the share of *N.* had already been sold to the defendant under the mortgage decree, the defendant and *H.* were simply tenants-in-common, and there could be no objection to *H.* doing what he liked with his remaining share. **KISANSING JIVANSING v. MORESHWAR VISHNU**

[1 L. R., 7 Bom., 91]

See also **PANDURANG KANTI v. VENKATESH PAI** . . . 1 L. R., 7 Bom., 95, note

160. *Mortgage of family property, Effect of, on minor members.*—*Sadoba*, *Raghoba*, and *Sambhapa* were members of an undivided Hindu family. *Sambhapa* died, leaving him surviving several sons. Subsequently *Sadoba*, *Raghoba*, and *Rajaram*, the eldest son of *Sambhapa*, mortgaged the family house to the plaintiff. In 1877 the plaintiff brought a suit upon the mortgage against *Sadoba*, *Raghoba*, and *Rajaram*. The Court of first instance awarded him possession of the house until he should receive payment of the mortgage-debt. In execution of the decree the plaintiff was obstructed by the widow and sons of *Sambhapa*, but after enquiry the Court, on 14th January 1879, overruled the objection and directed possession of the house to be given to the plaintiff. On 28th January 1879, the plaintiff complained that he was prevented from obtaining possession of one of the rooms in the said house; the defendant *Babaji* appeared, and admitted that he had locked up the room, and he refused to give up possession, contending that he was not bound by the mortgage, that at the date of the mortgage *Rajaram* was not joint with him and the other sons of *Sambhapa*, and that the loan was not required for family necessity. The Subordinate Judge dismissed the plaintiff's application. In 1882 the plaintiff brought the present suit against the defendant in which he prayed for a decree giving him possession of the said room on the terms of the decree passed in 1877. The defendant alleged that the house in question was not the joint property of his uncles *Sadoba* and *Raghoba*, but that his father *Sambhapa* was the sole owner; that his uncles *Sadoba* and *Raghoba* and his brother *Rajaram* had no right to mortgage it, and that the money was not required for family necessity. He contended that the decree of 1877 was not binding on him, and,

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(a) MANAGER—continued.****Alienation by manager—continued.**

further, that the present suit was barred. *Held* that the plaintiff was entitled to a decree against the defendant. There was nothing to show that at the date of the mortgage in 1876 the defendant was not still a member of the same joint family with Rajaram into which he had been born. In the mortgage transaction all the branches of the family were represented by their eldest members, and the mortgagees (the plaintiff) might reasonably suppose that a transaction entered into by them and apparently necessary for the common interest was really necessary. **BALVANT SAWATARAM v. BARAJI BIN SAMBHAPA**

[I. L. R., 8 Bom., 602]

161. ——— Mortgage for family purposes.—Decree against manager for meane profits.—Execution against family property.—*D.*, the manager of an Alyasantana family, having executed a usufructuary mortgage of certain land belonging to the family to *V.*, to secure the repayment of a debt contracted for purposes binding on the family, *V.* was compelled to sue for possession of the land mortgaged and obtained a decree for possession against *D.* and two other members of the family and for payment of meane profits from the date of the mortgage against *D.* only. After the death of *D.*, *V.* sought in execution proceedings against the surviving members of the family to obtain payment of the meane profits decreed, by sale of the equity of redemption of the land mortgaged to him by *D.* *Held* that *V.* was not entitled to execute the decree for meane profits against the family. **VENKATA KRISHNAYYAR v. KAVERI SHETTATI**

[I. L. R., 7 Mad., 201]

162. ——— Polygar, Position and liabilities of.—Debts incurred by.—Acquisition of moveable property by.—Assets in hands of successor.—Duty of lender dealing with polygar.—*Per KERNAN, J.*—A simple loan and an express charge require the same foundation to bind the family and estate of a polygar. The position of a polygar differs from that of a manager of a Hindu family in this incident amongst others, *viz.*, that *prima facie* he borrows on his own personal credit (where there is no mortgage) and not on the credit of the family estate, and the rule requiring a lender to satisfy himself of the existence of family necessity or of the family benefit which justifies the manager in borrowing would not be sufficiently complied with by similar enquiries in the case of a polygar borrowing money. To entitle a creditor, obtaining a charge from a polygar on the *corpus* of the estate, to the security of the estate, proof of imminent pressure or danger of loss, or of such close enquiries as to the position of the estate and the immediate circumstances of the pressure or apprehended danger as to satisfy a prudent and reasonable mind of the truth of an alleged pressure and impending danger, should be given. *Per curiam*—Although moneys lent by a creditor to a polygar

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(a) MANAGER—continued.****Alienation by manager—continued.**

have been actually expended in payment of paramount charges on the estate, the mere fact of such payments is no evidence of family necessity, nor can the estate be said to derive any benefit thereby, when the annual rents of the estate are more than sufficient to pay for all proper charges on the estate, so as to entitle the creditor to recover from the family estate. When a creditor has made no enquiry as to the necessity for a polygar borrowing money, he cannot remedy the omission by showing that if he had enquired he would have been informed that the money was wanted to pay for Government kist due by the polygar. *Per KERNAN, J.*—When the rightful owner of a polliam has stood by and allowed another to take and remain in possession of the polliam, and loans have been made to the *de facto* polygar, the moveable property, purchased by the *de facto* polygar out of the income or with borrowed moneys in his possession at his death, is assets available for payment of his creditors. *Per MUTTUSAMI AYYAR, J.*—The moveable property acquired by means of the income of the polliam by a *de facto* polygar is not available as assets for his creditors in the hands of *de jure* polygar who succeeded him and who has not admitted his predecessor's title nor accepted maintenance from him, but moveable property acquired by means of borrowed money may be pursued by the creditor as assets. **KOTTU RAMASAMI CHETTI v. BANGARI SESHAMA NAYANIVARU** . I. L. R., 3 Mad., 145

163. ——— Agreement made by manager of family.—Every member of a joint family is not bound by an agreement made by the head of that family. The rent of a joint undivided tenure cannot be enhanced on the strength of an *ikrar* executed by one of the coparceners. **HEMAYET-ULLAH CHOWDREY v. NIL KANTH MULLICK**

[17 W. R., 139]

164. ——— Authority of elder brother to sell.—In the absence of authority in the eldest brother from his brothers to sell their rights, the sale by the eldest brother is not the act of all the brothers. **QAHAD BUKSH v. BINDOO BASHINEE DOSSEE** 7 W. R., 296

See BHUJONANUND MYTHER v. RADHA CHURN MYTHER 7 W. R., 335

165. ——— Permanent lease by elder brother.—Necessity.—The elder brother in a joint Hindu family cannot grant a valid permanent lease of land without some consideration being proved to have been paid or applied towards meeting any necessary expenses of the joint family. **BRUJO MOHUN GHOSH v. LUCHMUN SINGH**

[W. R., 1864, 83]

166. ——— Agreements made by adult members of family.—Arrangements relating to the enjoyment of joint family property and

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(a) MANAGER—continued.****Alienation by manager—continued.**

acknowledgments of the right of the several members of the family to acquire separate property made by the adult members of the family, are to be held binding on the minor members of the family if they are not detrimental to their interest, and such arrangements consented to by a father should be held binding on his minor child. *NUBSINGH DASS v. NARAIN DASS* 3 N. W., 217

Upheld by Privy Council 26 W. R., 17

(b) FATHER.**See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.**

167. ———— *Mitakshara law.*—*Interest of father in ancestral property.*—Before partition a Hindu father has, under *Mitakshara law*, no definite share in joint ancestral property which he can alienate. *NOWBUT RAM v. DURBAREE SINGH* 2 Agra, 145

168. ———— *Sale by father of joint family of his own share.*—A sale by a father is valid by Hindu law to the extent of his own share of the undivided estate. There is no distinction according to the Madras school between a father and other coparceners. *PALANIVELLAPPA KAUNDAN v. MANHARU NAIKAN* 2 Mad., 416

169. ———— *Mitakshara law.*—*Sale of ancestral property.*—According to *Sadabart Prasad Sahu v. Foolbush Koor*, 3 B. L. R., F. B., 81, a sale of undivided ancestral property by a father without any legal necessity and without the consent of all the co-sharers, is, under the *Mitakshara law*, invalid. It is not valid even as regards the father's share. A son suing to set aside such an alienation is, according to that case, entitled to a declaration that the alienation is void altogether. The son suing in the father's lifetime on behalf of the family may be entitled to a decree for possession. Upon what terms that decree should be made, will, according to the decision in *Modhoo Dyal Singh v. Kolbur Singh*, B. L. R., Sup. Vol., 1018, depend on the equity which the purchaser may have to a refund of the purchase-money, or to be placed in the position of an encumbrancer as against the joint family in the particular case. *HANUMAN DUTT ROY v. KISHEN KISHOR NARAYAN SINGH* 8 B. L. R., 358

S. C. HONOOMAN DUTT ROY v. BHAGBUT KISHEN [15 W. R., F. B., 6

170. ———— *Mitakshara law.*—*Power of father to alienate.*—A Hindu father in a *Mitakshara* joint family has no power to settle ancestral property by conveyance in his lifetime, or by a will to take effect after his death, without the consent of all his sons living at the time. Where such a settlement is not assented to by the sons living at

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(b) FATHER—continued.****Alienation by father—continued.**

the time, and another son is afterwards born, no subsequent assent would be binding on the latter. *HURDOOT NARAIN SINGH v. BHEE NARAIN SINGH*

[11 W. R., 480

171. ———— *Mitakshara law.*—*Alienability by a coparcener of his undivided share of ancestral estate.*—*Will.*—A Hindu of the Southern Mahratta Country, having two sons undivided from him, died in 1871, leaving a will disposing of ancestral estate substantially in favour of his second son, excluding the elder, who claimed his share in this suit. In 1861, a suit brought by this elder son against his father and brother to obtain a declaration of his right to a partition of the ancestral estate was dismissed, on the ground that he had no right in his father's lifetime to compel a partition of moveables; and that, as to the immoveables, the claim failed, because they were situate beyond the jurisdiction of the Court. It having been contended that, as a father and his sons were during his life coparceners in the family estate, one of such coparceners being able, according to the decisions of the Courts, by act *inter vivos* to make an alienation of his undivided share binding on the others, it followed that the father might dispose by will of his one-third share. *Held* that, under the *Mitakshara law*, as received in Bombay, the father could not dispose of his one-third share by will. The doctrine of the alienability by a coparcener of his undivided share, without the consent of his co-sharers, should not be extended, in the above manner, beyond the decided cases. The Bombay Court had ruled that a coparcener could not, without his co-sharer's consent, either give or devise his share, and that the alienation must be for value. The Madras Court had ruled that although a coparcener could alienate his share by gift, that right was itself founded on the right to partition, and died with the coparcener, the title of the other co-sharers vesting in them by survivorship at the moment of his death. Without a decision as to which of these conflicting views, in regard to alienation by gift, was correct, the principles upon which the Madras Court had decided against the power of alienation by will were held to be sound and sufficient to support that decision. *LAKSHMAN DADA NAIK v. RAMCHANDRA DADA NAIK* I. L. R., 5 Bom., 48

[L. R., 7 I. A., 181

172. ———— *Ancestral property.*—*Joint property earned by a father and his sons.*—*Effect of contribution by the father of a nucleus of property earned by himself exclusively.*—*Power of disposition by will over.*—D. (defendant No. 1) lived at Jamnagar jointly with his father and brother until the year 1850. In that year his father died, and D. separated from his brother. At the time of separation D. took nothing out of the family estate, which was very small. He subsequently supported himself by practising medicine, which

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(b) FATHER—continued.****Alienation by father—continued.**

he taught himself from some medical books which his father had bought for him before his death. *D.* had two sons, *vis.*, *M.*, born in 1846, and *H.*, born in 1849. At the end of the year 1850, *D.* and his two sons came to Bombay, where *D.* continued to practise medicine, and established a dispensary. In 1862, having saved Rs5,000 by his medical practice, he set up business as a merchant, and acquired a considerable fortune. His two sons, *M.* and *H.*, who were joint with him, assisted him in his business. On the 7th October, 1882, *M.* separated from his father and brother, and received, as his share of the property, a sum of Rs6,000, and jewels and clothes worth about Rs5,000. On the same day *M.* made his will, whereby he appointed his father *D.* executor, and disposed of the whole of the portion of the property so allotted to him, directing that it should be invested and paid over to his son (the plaintiff) on his attaining majority; and, in the event of his dying without issue, that it should go to his (*M.*'s) brother, *H.* (defendant No. 2). On the 16th October 1882, *M.* died, leaving the plaintiff, his son, him surviving. The plaintiff in this suit contended that the whole of the said property was ancestral property in the hands of *M.*, and, as such, came to him (the plaintiff) unaffected by the will. The defendants contended that the property previously to the division was the joint, but not the ancestral, property of *M.*, his father, and brother; that it was property, earned by the joint exertions of *D.* and his sons; that at the division in October 1882, the portion taken by *M.* was his self-acquired property; and that he was entitled to dispose of it by will. *Held* that whether, previously to the division in October 1882, the joint property of *D.* and his two sons was ancestral or not, as soon as a portion of such joint property was divided off by the father (*D.*) and given to his son *M.*, it became ancestral in *M.*'s hands. For, assuming the truth of the defendants' story as to the mode in which the whole property was acquired, it could not be held that it was acquired by the equal exertions of the father and his two sons. The father contributed the nucleus of Rs5,000, and on that nucleus the property was formed by the joint exertions of himself and his sons. The portion, therefore, that came to *M.* did not represent the equivalent of his own exertions only. It represented also a portion of the father's original capital. The property thus being ancestral in the hands of *M.* he could not, in the town of Bombay, dispose of it by will, even though it consisted of moveables, to the prejudice of the plaintiff's rights. **CHATTERHOOG MESHEJI v. DHARAMSI NARANJI** [I. L. R., 9 Bom., 438]

(c) OTHER MEMBERS.

173. — Alienation by one member.—Alienation without consent of others.—Mitakshara law.—Quare.—Whether, under the law of

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(c) OTHER MEMBERS—continued.****Alienation by one member—continued.**

the Mitakshara, in Bengal, a voluntary alienation by one co-sharer, without the consent of the rest, of his undivided share in joint ancestral property is valid. **DEENDYAL LAL v. JUGDEEP NARAIN SINGH**

[I. L. R., 3 Calc., 198: 1 C. L. R., 49
I. R., 4 I. A., 247]

174. — Investment of proceeds of estate by one member.—If a member of an undivided Hindu family invests the proceeds of the joint ancestral estate in the purchase of other estates, he does so for the benefit of the joint family. Without the consent of all the members, or a legal necessity, or a declaration and acts amounting to a division, he cannot alienate so as to bind even his own share. **BONA KOREN v. BOOLEN SINGH**

[8 W. R., 182]

175. — Mitakshara law.—Under the Mitakshara law, a single member of a family is empowered to sell immoveable property for the purpose of paying off family debts only where the sons and grandsons are minors or otherwise incapable of giving their consent. Where the sale of landed estate by a single member for the payment of family debts is set aside because made without the son's consent, the son can only get possession on repayment of the purchase-money which was applied to the liquidation of the debts. **MUTROOBA KOONWARRE v. BOOTUN SINGH**

13 W. R., 31

176. — Power to alienate share of joint family property.—Where the validity of a sale of ancestral property is objected to on the ground that it was effected without the consent of all the members of the joint Hindu family, the objection can only be made by the member who did not consent. A member of a Hindu family may mortgage his undivided share of the joint property without the consent of his co-sharers, in order to raise money for the benefit of the family, *e.g.*, to pay debts or liquidate demands under legal necessity. **JUGERNATH KHOTIA v. DOOBO MISSE**

[14 W. R., 60]

177. — Alienation of joint property.—Mitakshara law.—As long as a Hindu family under the Mitakshara is living in the joint enjoyment of family property, such property can only be alienated by the joint consent of all the members, or in the event of such necessity as will, in the eye of the law, give the kurta power to alienate as the agent of all, then by the kurta alone. **BUNSEN LALL v. AOLADH ABBAN**

22 W. R., 552

178. — Mitakshara law.—Survivorship.—Mortgage of share in joint family property.—A member of a Hindu family living under the Mitakshara law and having joint family property, died entitled to an undivided share in such property, leaving two widows him surviving. The

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(c) OTHER MEMBERS—continued.****Alienation by one member—continued.**

widows were sued in their representative capacity in respect of debts incurred by him during his lifetime on his own account, and decrees were obtained against them. In execution, an interest in certain portions of the joint family property, to the extent of the share to which the deceased was entitled in his lifetime, was sold, and the auction-purchasers obtained possession of it. *Held* that the share of the deceased did not at his death pass to his widows, but that there being no male issue it passed to the remaining members of the family by survivorship, and could not be rendered liable to the debts of the deceased in a suit against his widows. *Quere*,—Whether those who take the share by survivorship are liable for the debts of the deceased to the extent of his share? A member of a joint Hindu family has no authority, without the consent of his co-sharers, to mortgage his undivided share in a portion of the joint family property, in order to raise money on his own account, and not for the benefit of the family. **SADABART PRASAD SAHU v. FOOLBASH KOER**. 3 B. L. R., F. B., 31; 12 W. R., F. B., 1

COSSENART v. SUDABART PRASHAD SAHO
[3 W. R., 210]

PHOOLBAS KOER v. LALLA JOGESHUR SAHOY
[18 W. R., 48]

Affirming on review SADABART PRASHAD SAHO
v. LOFFALI KHAN. 14 W. R., 339

179. ——— *Suit by one member to set aside alienation by another.*—There is nothing in *Rajaram Tewari v. Luckman Prasad*, B. L. R., Sup. Vol., 731; 8 W. R., 15; or in *Sadabart Prasad Sahu v. Foolbask Koer*, 3 B. L. R., F. B., 31, to justify the contention that where there is an alienation made by one shareholder, and another sharer sues to set aside that alienation, it follows as a consequence that a party who sues to set aside the alienation must obtain a decree. **SRI PRASAD v. RAJGURU TRIAMBUKNATH DEO**

[6 B. L. R., 555; 14 W. R., 386]

180. ——— *Mitakshara law.—Mortgage of undivided share in joint family property.—Succession.—Survivorship.—Decree in suit against widow.—Misjoinder.—Parties.*—On the death without issue of a member of a Hindu family joint in estate and subject to the Mitakshara law, his undivided share in the joint family property passes to the surviving members of the joint family and not to his widows, and cannot be made liable for his debts under decrees obtained against his widows as his representatives. *Quere*,—Where a member of a joint Hindu family governed by the Mitakshara law, without the consent of his co-sharers, and in order to raise money on his own account, and not for the benefit of the joint family, mortgages in his lifetime his undivided share in a portion of the joint family property, can the other members of the joint

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(c) OTHER MEMBERS—continued.****Alienation by one member—continued.**

family, on his death, recover from the mortgagee the mortgaged share, or any portion of it, without redeeming? A suit by a surviving member of a joint Hindu family subject to the Mitakshara law, to recover a moiety of the undivided share of a deceased member of the family in the joint family property, ought not to be dismissed on the ground that all the members of the family have not joined in bringing the suit, where it appears that the only other surviving member of the family has already sued for and recovered his moiety of the property, and disclaims all further interest, and is joined as a co-defendant in the suit. **PHOOLBAS KOONWAR v. LALLA JOGESHUR SAHOY**. I. L. R., 1 Cal., 226

[25 W. R., 295; I. R., 3 I. A., 7]

181. ——— *Power of one member to alienate his right to rent.*—Where members of a Hindu family are so far separate in estate that each collects his quota of rent separately, there is no reason why one of them should not make over, either in exchange or sale, his right of receiving a part of the rents. **KALIKA SAHOY v. GOURIE SUNKUR**. I. L. R., 12 W. R., 287

182. ——— *Mitakshara law.—Alienation by a member of his own share.*—One member of a joint and undivided Hindu family, governed by the law of the Mitakshara, cannot mortgage or sell his share of the family property without the consent, express or implied, of the other members. *Chamaili Kuar v. Ram Prasad*, I. L. R., 3 All., 267, followed. *Deendyal Lal v. Jugdeop Narain Singh*, I. L. R., 3 Cal., 198; and *Surej Bansi Koer v. Sheo Prasad Singh*, I. L. R., 5 Cal., 148, referred to. **RAMANAND SINGH v. GOBIND SINGH**. I. L. R., 5 All., 384

SHRO PRASAD JHA v. GUNGA RAM JHA
[5 W. R., 221]

183. ——— *Mitakshara law.—Alienation by one member of his own share.*—According to the law of the Mitakshara, joint family property cannot be alienated by any member of the family, save for urgent and necessary expenses of the family, without the consent of all the members. *Held*, therefore, where the holder of an impartible raj made an absolute gift of a portion of the estate appertaining to the raj to one of his wives, "in token of his love for her," and his eldest son sued to set aside the alienation, that the parties being members of a joint Hindu family, and governed by the law of the Mitakshara, the son was entitled to bring the suit, and that the alienation, not being made for necessary purposes, was void. **BHAWANI GHULAM v. DEO RAJ KUARI**. I. L. R., 5 All., 542

184. ——— *Power of member to give stranger interest in property.*—Until a division of ancestral property is effected, no member

**HINDU LAW—JOINT FAMILY—con-
tinued.****5. POWERS OF ALIENATION BY MEMBERS
—continued.****(c) OTHER MEMBERS—continued.****Alienation by one member—continued.**

of a joint family governed by the Mitakshara law can give a stranger any interest in the property. **MUD-
DUN GOPAL LALL v. GOWURBUTTY**

[21 W. R., 190

185. ———— *Effect of intro-
duction of stranger into family.—Auction-pur-
chaser.—Gift by member of family.—Co-sharers,
Assent of.*—The introduction of a stranger in blood
as auction-purchaser of a portion of the rights and
interests of an undivided Hindu family, breaks up
the constitution of such family as undivided, and
destroys the character of such property as joint and
undivided family property, and a gift subsequently
made by the remaining members of the original
undivided Hindu family of their rights to a third
person, without the assent of the auction-purchaser,
is not invalid by reason of the principle of Hindu
law which requires the assent of coparceners in an
undivided Hindu family to give validity to such a
gift. **BALLABH DAS v. SUNDER DAS**

[I. L. R., 1 All., 429

186. ———— *Joint un-
divided family property.—Assent of coparceners.—
Stranger.*—The member of a joint Hindu family
who alienates his rights and interests in the family
property to a stranger in blood thereby incapacitates
himself from objecting to a similar alienation by
another member of such family of his rights and
interests in such property, on the ground that such
alienation was made without his consent, and such
stranger is not competent to make such objection.
Ballabh Das v. Sunder Das, I. L. R., 1 All., 429,
followed. **GANRAJ DUBEY v. SHEZORE SINGH**

[I. L. R., 2 All., 896

187. ———— *Sale of share
in execution of decrees.*—According to the Hindu law
current in Madras, the member of an undivided
family may alienate the share of the family property to
which, if a partition took place, he would be indivi-
dually entitled, and there may be a valid sale of
such share on an execution in an action of damages for
a tort. **VIRASVAMI GRAMINI v. AYYASVAMI GRAMINI**

[1 Mad., 471

188. ———— *Suit to enforce
purchase.*—The right of a coparcener to alienate
his vested interest in the property held in coparcen-
ary is limited to the extent of the coparcener's share
in the particular property which is the subject of
the alienation. In a suit to recover a moiety of a
village which was a portion of the joint family prop-
erty, and which had been sold by the managing
member without the assent of the plaintiff's father,
and not for family purposes, the entire village being
less in quantity and value than the share of the
managing member,—*Held* that the plaintiff was
entitled to the relief prayed. **VENKATA CHELLA
PILLAY v. CHINNAYA MUDALIAR** . 5 Mad., 166

**HINDU LAW—JOINT FAMILY—con-
tinued.****5. POWERS OF ALIENATION BY MEMBERS
—continued.****(c) OTHER MEMBERS—continued.****Alienation by one member—continued.**

189. ———— *Power to dispose
of portion of property by will.*—A long course of
decisions in this Presidency recognise the right of a
coparcener to dispose of his interest in the joint
family property before partition: a coparcener can-
not, however, before partition, convey away as his
interest any specific portion of the joint property. In
a suit by an adopted son to set aside a will made by
his adoptive father disposing of immoveable property,
—*Held* that the will was of no effect as a valid devise
of property. At the moment of death the right of
survivorship was in conflict with the right by devise.
Then the title by survivorship, being the prior title,
took precedence to the exclusion of that by devise.
VITLA BUTTEN v. YAMENAMMA . 8 Mad., 8

190. ———— *Impartible pol-
liaput held by single member, Rights of disposi-
tion or alienation over.*—The words, "we and our off-
spring shall have no interest in the said polliaput (an
impartible one), but you alone shall be zemindar and
rule and enjoy the same," must be construed with due
regard to the person using them and the occasion
when they were used. *Held* by the High Court that
in the present case they were not a release, by the
person using them for himself and his heirs, of all
future rights of succession which might accrue to them
as members of an undivided family. Possession under
such a relinquishment was not a new and separate
acquisition. No question upon the law of limitation
can arise between the different members of the joint
family in respect of the property thus held by a single
member. An estate so possessed, free from present
coparcenary rights in others, is not entirely at the
disposal of the holder for his own purposes. The
possessor has only the qualified powers of disposition
of a member of a joint family, with such further
powers, or it may be with such restrictions, as spring
from the peculiar character of his ownership. These
powers fall short of a right of absolute alienation of
the estate. **PAREYASAMI alias KOTTAI TEVAR v.
SALUOKAI TEVAR alias OYYA TEVAR** . 8 Mad., 157

In the same case on appeal to the Privy Council
this decision, however, was reversed, and it was held
that the construction to be put on the words was that
they were a renunciation by the person using them
for himself and his descendants of all interest in the
polliaput either as the head, or as a junior member of
the joint family, and that their effect was to make
the polliaput, with its incidents of impartibility and
peculiar course of succession, the property of the
other members of the family, as effectually as if it
had been assigned on partition. **SRIVAGNANA TEVAR
v. PERIASAMI** . I. L. R., 1 Mad., 312

S. C. PERIASAMI v. PERIASAMI

[I. R., 5 I. A., 61

191. ———— *Law in Bombay
Presidency.*—On the western side of India a member
of an undivided Hindu family can, without the con-

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(c) OTHER MEMBERS—continued.****Alienation by one member—continued.**

sent of his coparceners, sell his share in the undivided property. *TUKARAM AMBAIDAS v. RAMCHANDRA VALAD BHIMANNA DHUGI*. 6 Bom., A. C., 247

192. ——— *Right to alienate share.—Liability to attachment.*—It is settled law in the Presidency of Bombay that one of several parceners in a Hindu undivided family may, without the assent of his coparceners, sell, mortgage, or otherwise alienate, for valuable consideration, his share in the undivided family estate, moveable or immovable. It is also settled law in the same Presidency that a share in the undivided estate of a Hindu family may be taken in execution, under a judgment against the parcener to whom such share belongs, at the suit of his personal creditor. *VASUDH V. BHAT v. VENKATESH SANBHAY*. 10 Bom., 139

193. ——— *Right to alienate share.—Consent.*—Held by a Full Bench, following the doctrine laid down in the preceding case, *Vasudev Bhat v. Venkatesh Sanbhay*, 10 Bom., 139, that a Hindu parcener may, without the consent of his coparceners, alienate his share in undivided family property. *Tukaram v. Ramchandra*, 6 Bom., A. C., 247, approved and adopted. *Bajee v. Pandurang, Morris, Part II*, 93, disapproved of. *FAKIRAPPA BIN SATYAPPA v. CHANAPPA BIN CHANMALAPPA* [10 Bom., 162]

194. ——— *Mortgage by one coparcener in undivided estate.—Sale of interest of one coparcener.—Rights of purchaser.—Partition.*—In 1848 two members of an undivided Hindu family mortgaged some land forming a portion of the ancestral estate. The mortgagees, having obtained a decree in 1856 on his mortgage, caused 20 gundas of the mortgaged land to be attached and sold, on account of the right and interest of one of the mortgagors only, on 24th January 1871. In a suit brought by the purchaser against a third member of the undivided family, in whose possession the 20 gundas then were, to recover the same from him, as being the property of the mortgagor, whose right and interest therein had been attached and sold,—Held that the share of a coparcener, being in the estate as a whole and not in any particular part of it, can be ascertained only by taking a general account of the whole estate, and making a distribution in accordance with the results of such account. In taking such account, however, and in making the consequent distribution, it would be only equitable that the share of the coparcener who affected to deal with a portion of the land as if empowered to mortgage it should, *ceteris paribus*, if the purchaser takes his place, be so made up as to embrace wholly, or so far as possible, the land which the purchaser bought as belonging to such coparcener. Held, also, that to obtain possession of the land purchased by himself, the purchaser must file against the other members of

HINDU LAW—JOINT FAMILY—continued.**5. POWERS OF ALIENATION BY MEMBERS—continued.****(c) OTHER MEMBERS—continued.****Alienation by one member—continued.**

the family a partition suit for the ascertainment of the share of the coparcener, whose interest he has purchased, as it stood in 1848, and for the allotment to himself of that share so far as it can legally and equitably be identified with the land purchased by himself, and that, consequently, the suit in its present form will not lie. *PANDURANG ANANDRAY v. BHASKAR SHADASHIV*. 11 Bom., 72

195. ——— *Alienation by one holder of inam.—Right of alienee.*—Held that it was competent for an inamdar to alienate a third share of whatever interest he himself had in a family inam, in consideration of services, rendered in recovering the inam itself; and that the grantee had a right to have the award made by the decree in the terms of the grant, which purported to bestow the third share in perpetuity. *SULTANJI T. PATIL SIRVALE v. RAGHUNATH R. MARATHE*. 2 Bom., 48; 2nd Ed., 45

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS.**See CASES UNDER SALE IN EXECUTION OF DECREES—JOINT PROPERTY.**

196. ——— *Sale of interest of one member.*—The right, title, and interest of one co-sharer in joint ancestral estate may be attached and sold in execution to satisfy a decree obtained against him personally, under the law of the Mitakshara, as well in Bengal as in Bombay and Madras. The purchaser at such a sale acquires merely the right to compel a partition as against the other co-sharers which the judgment-debtor possessed. *DEENDYAL LAL v. JUGDEEP NARAIN SINGH*

[I. L. R., 3 Calo., 196; 1 C. L. R., 49
L. R., 4 I. A., 247]

SOOMRUP THAKOOR v. CHUNDER MUN MISSE
[3 C. L. R., 232; 5 C. L. R., 26]

197. ——— *Mitakshara law.—Right of purchaser.*—The principle laid down in the case of *Deendyal Lal v. Jugdeep Narain Singh*, I. L. R., 3 Calo., 198, that the right, title, and interest of a Hindu father in a joint family estate under the Mitakshara law can be attached and sold in execution of a decree obtained against him personally, is applicable to the right, title, and interest of any member of the joint family, and is not confined to the interest of the father alone. *RAI NARAIN DASS v. NOWNIT LAL*

[I. L. R., 4 Calo., 309; 4 C. L. R., 67]

198. ——— *Mitakshara law.—Alienation by father, and decrees against son.—Purchaser of son's interest at sale in execution of decree.—Partition.*—Where property belongs to a father and son governed by the Mitakshara law, the son's interest vests at birth and is saleable. The son

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale of interest of one member—continued.**

may obtain a partition and separate possession of his share of ancestral property, and his share once partitioned will be liable to sale. There is, therefore, no reason why the interest of the son in the property while undivided should not be sold in satisfaction of his debts, but in such case the purchaser should bring a suit to obtain partition of the property. **JALLIDAR SINGH v. RAM LAL**

[I. L. R., 4 Calo., 723]

199. — **Sale under decree against one member.**—*Purchaser, Right of.*—The purchaser of the rights and interests of a judgment-debtor, who is a member of a joint family, at a sale in execution of a decree, does not acquire any title to the rights and interests of the other members of the family unless it is clear that the judgment-debtor was sued in a representative capacity. **LOKI MARTO v. AGHORH AMAIL LALL**

[I. L. R., 5 Calo., 144; 4 C. L. R., 465]

200. — *Right of purchaser at sale in execution of decree.*—*Bond fide purchaser.*—Although a purchaser at an execution-sale can ordinarily get no greater rights than the rights of the person named as the debtor in the decree under which the sale is held, the effect of a sale in execution of a decree against a member of a joint Hindu family under Mitakshara law has been extended on the ground that members of such a family, other than the judgment-debtor, contesting a sale under a decree, when shown to be bound to pay the debt, for the realisation of which the sale has been brought about, are in equity not entitled to relief against a *bond fide* purchaser without notice. Where the property of a joint family is sold in execution of a decree against one of the members, a judgment-creditor, who was plaintiff, and at whose instance the sale in execution was held, cannot claim to be in the position of a third person purchasing *bond fide* without notice. **Gri-dharae Lall v. Kantoo Lall and Muddun Thakoor v. Kanto Lall, I. L. R., 1 I. A., 321; Deendyal Lall v. Jugdeep Narain, I. L. R., 3 Calo., 198; I. C. L. R., 49, and I. R., 4 I. A., 247; and Ram Sahai v. Sheo Prasad Singh, 4 C. L. R., 266, discussed. GONESH PANDEY v. DABEE DOYAL SINGH. 5 C. L. R., 36**

201. — *Mitakshara law.*—*Mortgage of family property by one of several co-sharers in a joint estate.*—In a suit on a mortgage against a member of a joint Hindu family governed by the Mitakshara law, the whole of the interest of the joint family in the estate was decreed to the mortgagees, who subsequently obtained possession of it. Afterwards a suit was brought by another member of the family, who had attained majority prior to the mortgage, to set it and the decree aside, so far as he was concerned, and to recover possession of his share

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against one member—continued.**

of the joint family property. *Held* that the mere circumstance of an antecedent debt was not in itself sufficient to bind him, and that the alienation was not good as against him, unless it could be shown that he had either expressly or impliedly given his consent to the mortgage. **UPROOF TEWARY v. LALLA BANDEJEE SUHAY**

[I. L. R., 6 Calo., 749; 8 C. L. R., 192]

202. — *Mortgage by sons of an insane person.*—*Sale in execution of decree.*—*Suit by Committee to recover possession.*—*Purchaser, Rights of.*—Although a coparcener in a Mitakshara family has a right (in a suit properly framed for that purpose) to recover the whole property from an execution-purchaser, subject to the right of the latter to have the share and interest of the debtor ascertained by partition, yet this rule will not be applicable where the suit is brought by a person who has become insane subsequent to his birth, inasmuch as no decree could be passed in his favour which could contemplate a partition between himself and the purchaser of the interest of his coparceners. **RAM SAHYA BHUKUT v. LALLA LAL-JEE SAHYA I. L. R., 8 Calo., 149; 9 C. L. R., 457**

203. — **Sale under decree against adult members.**—*Sale of right, title, and interest of member of joint Hindu family.*—*Suit to set aside alienation.*—A suit having been brought against the ostensible heads of a family governed by Mitakshara law upon a mortgage, a decree was obtained for the sale of the mortgaged property, and under that decree the right, title, and interest of the judgment-debtors were sold. The plaintiffs, who were minors at the date of the decree and had not been made parties to the suit, instituted a suit to recover their shares in the property sold. The debt for which the property had been mortgaged was one which the plaintiffs and their predecessors were morally bound to pay. *Held* on review, reversing the decision of **Hunooman Sahai v. Parsidh Narain Singh, 7 C. L. R., 465**, that the entire property of the family passed to the purchaser, and that the plaintiff's suit must be dismissed. **PARSIDH NARAIN SINGH v. HUNOMAN SAHAI**

[I. C. L. R., 268]

204. — *Mitakshara law.*—*Family trade.*—*Alienation of ancestral property by some members of family.*—*Interest of son affected by sale in execution of a decree against his father.*—*Parties to suit.*—A family, governed by Mitakshara law, carrying on a trade in the names of some of its members, having become indebted to the defendants in a large amount in respect of advances made for the purposes of the trade, some of the head members of the family executed a bond in favour of the defendants for the amount due, and hypothecated certain family properties which stood in their

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against adult members—continued.**

names as collateral security therefor. The amount not having been paid on the due date, the defendants brought a suit on the bond against the persons who had executed it, and obtained a decree which, however, did not direct that the properties hypothecated should be sold. In execution of that decree the interest of the judgment-debtors in the hypothecated properties, and in other family properties, were sold, and were purchased by the defendants, who, subsequently, under their purchase, obtained possession of the shares of the judgment-debtors and of those of their sons. The decree not having been satisfied by those sales, the defendants brought a suit against the remaining head members of the family to have it declared that their interests in the family properties were liable to satisfy the decree, and that suit also was decreed. Under the last decree the interests in the family properties of the judgment-debtors under that decree were sold, and were purchased by the defendants who subsequently obtained possession of the shares of those judgment-debtors and of the shares of their sons. Some of the sons of the judgment-debtors in both decrees were adult at the time when the suits were instituted. In suits brought, many years after the sales, by members of the family who had not been parties to the previous suits, to recover their shares in the family properties, —*Held* that the interests of all the members of the family had passed on the sales. *Per MITTER, J.*—There is no distinction in principle between the case of an adult son and that of a minor son as regards a son's interest in ancestral property being liable to pass on a sale of such property in execution of a decree against his father only; but if an adult son proves that he would have been able to save the property by paying off the debt out of his private funds, if he had been a party to the suit, *quære*,—whether he should not be allowed to have the sale set aside on payment of the debt due under the decree. *BASO KOER v. HUREY DASS*

[I. L. R., 9 Cal., 495; 12 C. L. R., 292]

205. — **Sale under decree against joint family property.**—*Liability of family for debts contracted by co-sharer.*—*Debts binding on joint family.*—When one member of a Mitakshara family contracts a debt which is binding not only on the persons executing the contract, but on the other members of the joint family to which he belongs, the creditor has two courses open to him: (a), he may elect to treat the debt as a personal debt, and confine his suit to the person who actually contracted it. In such a suit he obtains a mere personal decree not binding on the family, and in execution thereof he merely sells the right, title, and interest of the person who actually contracted the debt; that was the case of *Deendyal Lal v. Jagdeep Narain Singh*, I. L. R., 8 Cal., 198; I. L. R., 4 I. A., 24; or (b), he may treat the borrower as acting for the

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

family, sue him as representing the joint family, and when he has obtained a decree against the borrower in that capacity, proceed to sell the right, title, and interest of his judgment-debtors (i.e., all the members of the joint family) or any of them. That was the case of *Bissessar Lal Sahoo v. Luckmessur Singh*, I. L. R., 6 I. A., 233. *JUMOONA PERRAD SINGH v. DIG NARAIN SINGH*

[I. L. R., 10 Cal., 1; 13 C. L. R., 74]

206. — **Rights of purchaser of co-sharer's interest in joint family property.**—When the right, title, and interest of a co-sharer in a joint family estate are sold in execution to satisfy a decree against him personally, the purchaser acquires merely the right of the judgment-debtor, to compel a partition against the other co-sharers. *Deendyal Lal v. Jagdeep Narain Singh*, I. L. R., 4 I. A., 247; I. L. R., 8 Cal., 198, referred to and followed. A money-decree having been made against the father of a family, and the decree-holder having caused to be attached the family estate, and brought to sale the father's right, title, and interest therein,—*Held* that, by the sale not the father's share but that interest which he had—*vis.*, the right which he would have had to a partition, and to what would have come to him under it—passed to the purchaser. The family, governed by the Mitakshara, consisted of father, mother, and minor son, at the time of the decree, and the Court below had decreed to mother and son one third each, leaving one third to the purchaser. A second son was born, and the mother died pending this appeal, the two sons becoming parties in respect of her share. *Held* that, on this appeal, preferred by the purchaser, the decree should stand, the appellant having got quite as much as he would have got if the decree had been more correct in form, as he had obtained all that he would have been entitled to on a partition, without being left to demand it. *HARDI NARAIN SAHU v. RUDER PERKASH MISSEER*

[I. L. R., 10 Cal., 636; I. L. R., 11 I. A., 26]

207. — **Alienation.**—*Liability of the joint undivided family property for family debts.*—*Sale in execution of decree against one member of family property.*—*Rights of other members.*—During the minority of S., a member of a joint Hindu family consisting of himself, his father J., and his uncle H., and while he was living under the natural guardianship of his father, E. sued J. and H., but not S., as the heirs of P., S.'s grandfather, and as the heads and representatives of the joint family, to recover a joint family debt incurred to E. by P. before S.'s birth, by the sale of the joint family estate which had been hypothecated by P. as security for the payment of such debt. E. obtained a decree in this suit against J. and H. for such debt, such decree directing the sale of

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

the joint family estate for the satisfaction of the debt. In the execution of such decree the rights and interests of *J.* and *H.* in such estate were put up for sale and were purchased by *R.*, who took possession of such estate. *Held*, in a suit by *S.* to recover his share of this joint family estate, that, under the circumstances, it must be held that the decree against *J.* and *H.* was made against them as representing the joint family, and therefore such decree was properly executable against such estate, notwithstanding that *S.* was not formally brought on the record of the suit in which such decree was made, and *S.* could not recover his share of such estate. *Bisessar Lal Sahoo v. Lachmessur Singh*, *L. R.*, 6 *I. A.*, 268, followed: *Deendyal Lal v. Jagdeep Narain Singh*, *I. L. R.*, 3 *Cal.*, 198, distinguished. *RAM SEVAK DAS v. RAGHUBAR RAI*

[*I. L. R.*, 3 *All.*, 72]

208. ———— "*Ancestral property.*"—*Right of occupancy at fixed rates.*—*Liability of son for father's debts.*—*Purchaser at execution sale.*—*Notice.*—A decree was made against a Hindu, governed by the law of the Mitakshara, for money which he had criminally misappropriated. The transferee by sale of the decree brought to sale in execution thereof the judgment-debtor's right of occupancy in certain land as a tenant at fixed rates. The judgment-debtor's two sons brought a suit against the purchaser to recover two thirds of the holding. *Held* that the right of occupancy at fixed rates in such land was ancestral property,—that is, property in which under Hindu law the sons took a vested interest by birth. *Held*, also, that as the decree was not one to satisfy which the family property could be sold, being a mere money-decree against the father personally, and for a debt which it was not the duty of the sons to pay, and as the purchaser was bound to have satisfied himself as to whether the family property was liable to be sold in satisfaction of the decree, the purchaser could not, on the principles laid down in *Girdhar Lal v. Kantoo Lal*, 14 *B. L. R.*, 187; and *Suraj Bansi Koer v. Sheo Persad Singh*, *I. L. R.*, 5 *Cal.*, 148, be protected as a *bond fide* purchaser for value, without notice that the family property was not liable to be sold in satisfaction of the decree, but must be taken to have had constructive notice of that fact. *MAHABIR PRASAD v. BASDHO SINGH*

[*I. L. R.*, 6 *All.*, 284]

209. ———— "*Joint ancestral property.*"—*Execution against deceased son's interest in hands of the father.*—*Death of judgment-debtor after attachment and before sale.*—*Civil Procedure Code, s. 274.*—In execution of a money-decree, an order was issued under section 274 of the Civil Procedure Code, for the attachment of property which was the joint ancestral estate of the judgment-debtor

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

and his father. The sale was ordered and a day fixed for sale, but in consequence of postponements made at the judgment-debtor's request, no sale took place. In the meantime the judgment-debtor died, and the decree-holder applied for execution against the father as representative of the judgment-debtor, whose interest had survived to him. *Held* that the decree-holder had, by the proceedings taken in execution during the son's lifetime, obtained rights over his interest which could not be defeated by his death before sale. *Suraj Bansi Koer v. Sheo Persad Singh*, *I. L. R.*, 5 *Cal.*, 148, followed. *RAI BALKISHEN v. RAI SITARAM* . . . *I. L. R.*, 7 *All.*, 781

210. ———— "*Alienation by father.*"—*Co-sharers.*—*Sale of minor's share.*—*Right of purchaser.*—Plaintiff's father (first defendant) borrowed money to enable him to sue for the recovery of certain lands, and, being unable to repay it, judgment was obtained against him, and the lands in suit were sold, and purchased at the Court sale by the fourteenth defendant. Plaintiff brought the present suit to set aside the sale of one half of those lands; on the ground that they formed his share, that he was a minor when his father incurred the debt, and that his share was not liable for debts incurred by his father. The Munsif gave a decree in favour of plaintiff. The fourteenth defendant appealed. The District Judge reversed the Munsif's decree. On special appeal by the plaintiff,—*Held* that, as the debt was the first defendant's personal debt, and the decree was against him personally, only his rights and interest in the property could be sold, and nothing beyond his rights would pass to the purchaser. *Deendyal Lal v. Jagdeep Narain Singh*, *I. L. R.*, 3 *Cal.*, 198, followed. *VENKATASAMI NAIR v. KUPPATYAN* . . . *I. L. R.*, 1 *Mad.*, 354

211. ———— "*Mortgage by father.*"—*Minors' interests.*—The plaintiffs, minors, by their mother, as next friend and guardian, sued defendants, sons of one *S. D.*, under section 230 of Act VIII of 1859, to recover a four-fifth share of a house and lands of which plaintiffs were dispossessed by the defendants in the execution of the decree in a suit, No. 33 of 1872. The facts were that in a suit, No. 28 of 1871, a decree for money due under a mortgage-bond was passed against *S. D.*, the father of the present defendants, and in execution of the decree certain immoveable property was attached. The sons of *S. D.* came forward and put in a claim to the property, and applied for the release of the attachment. The claim was disallowed. The sons being dissatisfied with the order disallowing their claim, brought suit No. 33 of 1872, in which they prayed for a partition, and that their four-fifths share might be released from attachment. Prior to that suit the attached property had been sold, but the sale was limited to the right, title, and interest of the father

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

in the joint property; however, in suit No. 33 of 1872, the Court having decreed a partition, further entertained the question as between the sons and the creditor of the father "whether the attachment of the rest of the family property specified in the plaint ought not, in respect of plaintiff's shares, to be cancelled," and decided it in favour of the creditor on the ground that the debt had been contracted for purposes binding on the family, and further decided that the property so under attachment ought to be sold to discharge the debt, and it was sold accordingly. Subsequently to the decree for partition, and when the defendants were divided from their father, *S. D.* (who was the sole judgment-debtor in suit No. 28 of 1871), the house and lands now in issue, which formed no part of the property mortgaged for the debt, the subject of suit No. 28 of 1871, were attached and sold and bought by the father of the present plaintiffs. The question in the present suits was whether the properties last mentioned, not having been attached in execution of the decree in suit No. 28 of 1871, and not, therefore, being any of those specifically affected in favour of the creditor by the decree in suit No. 33 of 1872, were liable, as part of the joint family property, under the declarations of the judgment in that suit, to discharge the debt due to the creditor of the father by the decree in suit No. 28 of 1871. *Held* on this question by the High Court (*MORGAN, C. J., INNES and KINDERSLEY, JJ.*), affirming the decree of the Court of first instance, that these properties were not so liable; that under the decree and execution proceedings in suit No. 28 of 1871 merely the rights of *S. D.* were sold; that nothing in that litigation indicated that it was intended to enforce the debt against the whole property as a debt due from the family, and that the decision in the partition suit (No. 33 of 1872) covered only what was then in question, and could not be viewed as authorising the attachment of the items of property now in question in execution of that decree. That the present suits were, therefore, rightly dismissed. *By INNES, J.*—That the prayer of the plaintiffs (the sons) in suit No. 33 of 1872, so far as it related to the removal of the attachment in execution of the decree in suit No. 28 of 1871, should have been at once granted. That the creditor in suit No. 28 of 1871 had elected to sue the father alone, and that, though it might have been open to him (the creditor) to have so framed his suit as to have obtained a decree making the joint family liable in persons and property, having failed to do so, he could not afterwards seek to extend the operation of the decree beyond the proper and limited scope of it; and that the Court, in trying the question of the liability of the sons to discharge the debt due to the first defendant's creditor, in effect instituted against them a new suit. *Deendyal Lal v. Jugdeop Narain Singh, I. L. R., 3 Cal., 193*, followed. The authorities reviewed on the question whether in execution of a decree the interests of an

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

but those who were actual parties to it, or those who, on the death of such parties, became their representatives in interest, could be affected. *VENKATARAM-AYYAN v. DIKSHATAR I. L. R., 1 Mad., 358*

212. — Rights of creditors and purchasers.—Partition.—*Per INNES, J.*—A creditor of an undivided Hindu family, as such, has no right to intervene in a partition suit among coparceners, and to claim that the debt owing to him be distributed over the several parcels of the family property so as to charge all the coparceners. *Per MUTTUSAMI AYYAR, J.*—Although an account is taken between coparceners as a convenient matter of procedure for resolving their joint rights and liabilities into several rights and liabilities, this does not create an additional right in the creditors of the family to forbid partition until their debts are paid, or in purchasers at a Court sale to add to the determinate interest that has been sold to them by a fresh enquiry into the real character of the decree debt. *VELLITANMAL v. KATHA CHETTI*

[I. L. R., 5 Mad., 61]

213. — Mortgage by one coparcener.—*Suit to declare shares of other coparceners liable.*—*C.*; one of two undivided Hindu brothers, hypothecated family property as security for money lent. The creditor having obtained a decree, in a suit brought against *C.*, against the property hypothecated only, the personal remedy being barred by limitation, attached the property hypothecated. *S.*, the brother and the minor sons of *C.*, intervened, and their shares in the property were released from attachment and the one-sixth share of *C.* alone was sold in execution and bought by the creditor. The creditor having brought a suit to have it declared that the shares released from attachment were liable to be sold for the amount due under the decree against *C.*, and having proved that the debt was incurred by the managing member for purposes which would render it binding on the defendants.—*Held* that the suit must nevertheless be dismissed. *CHOCKALINGA MUDALI v. SUBBARAYA MUDALI*

[I. L. R., 5 Mad., 133]

214. — Mortgage made by managing brother.—*Rights of purchaser at Court sale.*—If one of several undivided Hindu brothers mortgages the family lands, and the creditor sues upon the mortgage-bond without making the brothers of the debtor parties to the suit, and a decree is passed against the mortgagor personally, directing payment of the debt and costs, and declaring the property mortgaged liable for the amount decreed, and the property is subsequently attached by the judgment-creditor in execution of the decree, and the right, title, and interest of the judgment-debtor in the land mortgaged is sold by the Court and pur-

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

chased by a third party, the brothers of the judgment-debtor are entitled, in a suit for partition of the family property, to recover their shares in the lands made over by the Court to the auction-purchaser, although such purchaser proves that the mortgage-debt was contracted by the judgment-debtor as manager of the family and for purposes binding on the family. *DASARADHI v. JODDUMONI*

[I. L. R., 5 Mad., 193]

215. ———— *Suit by coparcener for share of house sold in execution of decree against another coparcener.*—Although a suit by a Hindu coparcener for a partial partition of undivided family property will not lie, yet where one of two coparceners sells to a stranger his interest in a parcel of the family land, the other coparcener may either repudiate the sale or affirm it and claim by partition to recover from the stranger his share of the parcel sold to which the alienation could not extend and which has now become his separate property. *CHINKA SANTYASI v. SUBIYA* . I. L. R., 5 Mad., 193

216. ———— *Decree on mortgage-bond.—Rights of purchaser.*—Where the property of an undivided Hindu family consisting of father and sons has been sold in execution of a decree against the father only in a suit upon a mortgage-bond executed by the father to raise money for no improper purposes, and it does not appear whether the sale was carried out in execution of so much of the decree as was personal or in execution of the order for enforcement of the mortgage, the sons in a suit for partition of the family property are not entitled to recover their share of the property sold from the purchaser. *SRINIVASA NAYUDU v. YELAYA NAYUDU* . I. L. R., 5 Mad., 251

217. ———— *Undivided family.—Uncle and nephew.—Decree against uncle.—Sale of ancestral land.—Interest of purchaser.—Nature of debt immaterial.*—*K.*, a Hindu, the undivided uncle of *D.*, a minor, executed a bond, whereby certain ancestral property was hypothecated to secure the repayment of a sum borrowed by *K.* In execution of a decree against *K.*, obtained upon this bond, *A.* brought to sale and purchased the right, title, and interest of *K.* in the land hypothecated and obtained possession of the said land. *Held*, in a suit by *D.* to recover one moiety of the land in *A.*'s possession, that whether or not the decree against *K.* was founded upon a debt incurred for paying a debt of *D.*'s grandfather, *D.* was entitled to recover a moiety of the land purchased by *A.* *DORASAMI VAJAPPALAR v. ATIRATRA DIKSHITAR* . I. L. R., 7 Mad., 136

218. ———— *Debt binding on family.—Suit against one of two undivided brothers.—Personal decree.—Attachment of family property.—Effect of decree.*—The creditor of a joint Hindu

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

family, consisting of two brothers, sued the elder brother only (the younger being a minor) to recover a debt binding on both brothers, and having obtained a decree for the payment of the debt, attached the family property. In a suit by the younger brother to set aside the attachment *quoad* his share in the property attached,—*Held* that, inasmuch as the decree was not passed against the elder brother as manager of the family, the younger brother's suit must prevail. *Bissessor Lall Sahoo v. Luchmessur Singh*, L. R., 6 I. A., 238, distinguished. *VIRABAGAYAMMA v. SAMUDRALA* . I. L. R., 8 Mad., 203

219. ———— *Mortgage by father.—Suit to enforce against manager of family.—Decree for sale.—Attachment.—Order for sale of property.—Sale of right, title, and interest.—Rights of purchaser.*—*V.*, a Hindu, and his son *P.*, executed a mortgage of a house, the self-acquired property of *V.* *V.* having died, *P.*, the manager of the family, was sued by the mortgagee on his own promise in the mortgage-deed and as representative of *V.*, and a decree was passed for the sale of the house in default of payment by *P.* within three months of the debt then due. This period having elapsed, the mortgagee applied to the Court to enforce the decree by attachment of the mortgaged property, and the property having been attached, application was made for sale. By a warrant, dated 3rd December 1874, the Sheriff of Madras was ordered to sell the property, and on the 12th July 1875 the Sheriff sold the right, title, and interest of the judgment-debtor in the said house to *K.* In a suit brought by *K.* against *P.* and the other members of the family to recover possession of the house,—*Held* that as the mortgagee intended to enforce his rights under the mortgage by sale, and the Court intended to sell the house as mortgaged property, *K.* was entitled, by virtue of his purchase, to recover possession of the house. *Bissessor Lall Sahoo v. Luchmessur Singh*, L. R., 6 I. A., 238, referred to and followed. *KRISHNAMA v. PERUMAL* [I. L. R., 8 Mad., 388]

220. ———— *Mortgage of family property by son during father's temporary absence how far binding on the family.—Subsequent sale of such mortgaged property in execution of money-decree against father.—Rights of purchaser at such a sale.*—The land in dispute was the ancestral property of *H.* and his son, *J.*, who were members of an undivided Hindu family. This land had been mortgaged to one *B.*, to whom the father and son were also liable on a separate money-bond. *H.* being pressed by his creditors, left his village and remained away for some years. During his father's absence, *J.*, being pressed for payment of his debts, compromised *B.*'s entire claim for Rs200, which he obtained on loan from the plaintiff, to whom he gave, as security, a mortgage with possession of the land in

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

question. The plaintiff continued in possession until he was dispossessed by defendant No. 2, who claimed to be purchaser of the land at a sale held in execution of a money-decree obtained by defendant No. 1 against *H*. The plaintiff now brought the present suit against the defendants, praying that either he should be restored to the possession of the lands, or that the sum of Rs200, which he had advanced to *J*., should be decreed to be paid by the defendants. Both the lower Courts rejected the plaintiff's claim. On appeal by the plaintiff to the High Court,—*Held* that the plaintiff's claim to be regarded as a mortgagee of the entire property could not be allowed. The temporary absence of his father, *H*., owing to the pressure of his creditors, could confer no legal authority on *J*. to take upon himself to mortgage the family property. He had not been authorised by his father, nor did he assume to act for him when he mortgaged the property. The mortgage to the plaintiff was, therefore, to be regarded as the act of *J*. in his individual capacity, and, as such, could receive no ratification by the mere reticence of his father. The plaintiff, however, having been in possession was entitled, if he could establish his title to a lien on *J*'s share, to be put into possession jointly with the defendant if the latter's title was proved.

PATIL HARI PRAMIT v. HAKAMCHAND

[I. L. R., 10 Bom., 368]

221. ——— Joint and undivided property.—Debt of deceased member.—Liability of his interest.—*J*., a member of a joint Hindu family, left two sons, *E*. and *S*. *S*. borrowed money upon a simple bond, and, after his death, the obligee sued his widow and daughter-in-law upon the bond, obtained a decree against them, and in execution thereof brought to sale *S*'s interest in the property. *B*., the grandson of *E*., thereupon sued the purchaser to recover the same, on the ground that it was the joint property of *S*. and himself, and could not be attached and sold in satisfaction of *S*'s debt. *Held* that on the death of *S*., his interest passed to the plaintiff by survivorship, and was not liable after his death to any personal debt he had incurred, inasmuch as no charge had been made on the property, and the creditor could not recover his money from the joint property after the death of *S*. when he had not obtained judgment against *S*., and taken out execution by attachment against him. *Suraj Bansi Koer v. Shao Persad Singh*, I. L. R., 5 Cal., 148; and *Rai Bal Kishen v. Rai Sita Ram*, I. L. R., 7 All., 731, referred to. **BALBHADAR v. BISHESHAR**

[I. L. R., 8 All., 495]

222. ——— Liability of ancestral estate for separate debt of deceased coparcener.—Undivided family property is not, in the hands of surviving coparceners, generally speaking, liable to separate debts of a deceased coparcener.

HINDU LAW—JOINT FAMILY—continued.**8. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.****Sale under decree against joint family property—continued.**

Where, therefore, a Hindu, undivided in estate from his father, died separately indebted to the plaintiffs, who obtained a decree against the father and wife of the deceased, as his legal heirs and representatives, to recover, from the estate and effects of the deceased, the amount of their debt and costs, and sought, in satisfaction of the decree, to attach a shop which during the lifetime of the deceased and subsequently to his death had been in the possession of his father, there being no proof of any separate estate of the deceased having devolved upon his father,—*Held* that, though the son was, during his life, jointly interested with his father in the shop as being ancestral property, his right had come into existence at his birth and died with him, and therefore the plaintiffs could not render the shop available for their claim. In the Bombay Presidency, the share of one of the coparceners in a Hindu undivided family in the ancestral estate may, before partition, be seized and sold in execution for his separate debt in his lifetime. Such a coparcener cannot, however, by simple voluntary gift, or by devise, alienate his share to a stranger, so as to bind his surviving coparceners after his decease. The purchaser, mortgagee, or other alienee, for valuable consideration, of such an unascertained share, cannot, before partition, insist upon the possession of any particular portion of the undivided family estate. The mortgagee or purchaser of a share in the undivided ancestral estate of a Hindu family takes such share subject to the prior charges or encumbrances affecting the family estate or that particular share. If the mortgage or sale be of a special portion of the family property, and possession of such portion can, on partition, be given to the mortgagee or purchaser, without injustice to prior encumbrancers or to coparceners, it is the duty of the Court making the partition, to give effect to the mortgage or sale, and so to marshal the family property among the coparceners as to allot that portion, or so much of it as may be just, to the mortgagee or purchaser. *Quare*.—Whether, in the event of it being impossible, consistently with the rights of others, to give possession of the portion mortgaged or sold to the mortgagee or purchaser, he would be entitled to be recouped out of such other portion as might, on partition, be allotted to the parcener whose share in the special portion had been mortgaged or sold. The attachment of a parcener's share in the family property under an ordinary money-decree should go against the share, right, title, and interest of the judgment-debtor in such parts of the family property (naming and describing them) as the judgment-creditor can specify, and against his share, right, title, and interest in all other parts of the family property. *Kalyanbhai v. Motiram Jambadas*, 10 Bom., 579; *Vasudev Bhat v. Venkatesh Sanbhav*, 10 Bom., 139; and *Fakirappa v. Chanappa*, 10 Bom., 162, commented on and distinguished.

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.**

Sale under decree against joint family property—continued.

Goor Pershad v. Sheodin, 4 N. W. 137, approved.

UDARAM SITARAM v. RANU PANDUJI
[11 Bom., 76]

223. ————— *Mortgage made by one coparcener without consent of the others.—Onus probandi.*—Where joint family property is mortgaged by one parcener, in order that it may bind the coparceners, the mortgages must prove affirmatively that the mortgage was assented to by the other coparceners, or was necessary for family purposes. *LALA MORJI v. VASUDEVI MOHESHWAR GAYPUL*
[11 Bom., 238]

ODDHUN MISSEER v. HOODDAR SINGH
[1 N. W., Ed. 1873, 271]

224. ————— *Sale in execution of decree of one of several coparceners' share in joint family property.—Right of purchaser.—Right of parceners to partition.*—The purchaser at a Court's sale of the right, title, and interest of one of the coparceners in the undivided estate, by his certificate, under section 259 of the Civil Procedure Code, can take no more than the interest of such coparcener in the property disposed of, as a member of the united family. Course pointed out as to the ascertainment of what that interest is, and how the transaction can be made good for the benefit of the purchaser of a coparcener's interest in a particular piece of property forming only a part of the common estate. Where, however, the purchaser got into possession and held it with such an accompanying right as the judgment-debtor could transfer to him,—*Held* that the purchaser was in as a tenant-in-common with the judgment-debtor's coparceners, and that they were entitled to possession in common with him, and might enforce their right for a share of the enjoyment, or for a definition of the portions in which each party, in future, was to have a sole interest. Such coparceners, however, are not entitled to eject the purchaser wholly from a defined moiety of any particular portion of the joint property. *MAHABALAYA BIN PARWAYA v. TIMAYA BIN APPAYA*
[12 Bom., 138]

225. ————— *Alienation of joint family property.—Mortgage by manager.—Decree against manager.—Sale in execution of decree.*—G., the brother of the plaintiff, executed a mortgage to the defendant during the plaintiff's minority. The deed recited that the money was borrowed to pay off a family debt, and to defray family expenses. The defendant sued G. on the mortgage, and obtained a decree. A house, which was part of the family property, was sold in execution, and was purchased by the defendant himself. The plaintiff sued to have the sale set aside, and to recover his half share in the house. *Held* that the defendant was not entitled to hold the plaintiff's share in the pro-

HINDU LAW—JOINT FAMILY—continued.**6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—continued.**

Sale under decree against joint family property—continued.

perty by virtue of the sale to him under the decree obtained against G. alone. *Held* also, that the plaintiff was entitled to be put into possession of the whole house, the defendant being left to his remedy by a suit for partition. The plaintiff, however, having claimed only the restoration of his half share, the decree was limited accordingly. *Held*, also, that it was not competent for the Court in this suit to go into the question whether the mortgage by G. was binding on the minor plaintiff. *MAHUTI NARAYAN v. LILACHAND*
[1 I. L. R., 6 Bom., 564]

226. ————— *Son's liability for father's debts.—Execution sale of ancestral property for decree against father.*—By the sale of ancestral property in execution of a mere money-decree against the father for his separate debt, only the right, title, and interest of the father pass to the purchaser, and nothing more; and this holds good whether the purchaser is a stranger or the decree-holder himself. *Deendyal v. Jagdeep Narain Singh*, L. R., 4 I. A., 247; *Hurday Narain v. Ruder Pershad*, L. R., 11 I. A., 26; and *Mudden Thakoor v. Kantoo Lal*, L. R., 1 I. A., 321, referred to. *Lakshmichand v. Kastur*, 9 Bom., 60; and *Sehagchand Gulabchand v. Bhagichand*, I. L. R., 6 Bom., 205, followed. *BHIKAJI RAMCHANDRA OKE v. YASH-VANTRAY SHRIPAT KHOPKAR*
[I. L. R., 8 Bom., 439]

227. ————— *Decree against father alone for unsecured debts.—Purchaser at a sale in execution of such decree.—Liability of family property.—Sons, How far such decree and sale binding on.*—Where a father alone is sued, not expressly in his representative capacity, and without his sons being joined as co-defendants, for unsecured debts contracted by him, whatever be the nature of such debts, the decree does not bind the interest of the sons in the family estate. Nor when the judgment-creditor proceeds to sale in execution of such decree against the family property does the sale of the father's "right, title, and interest" pass any more than the father's interest to be ascertained generally by a partition with his sons. *BABAJI v. DHUBI*
[I. L. R., 9 Bom., 305]

HINDU LAW—MAINTENANCE.

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HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued. Col.**

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See HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

[15 B. L. R., 145, note

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I. L. R., 7 Mad., 423

1. NATURE OF RIGHT.

1. ——— Nature of right to maintenance.—*Right not based on contract.*—Ordinarily, the right to maintenance does not rest upon contract. It is a liability created by the Hindu law, and arises out of the jural relation of the Hindu family. It is enforceable in numerous instances in which there is no connection with contract. *SIDLINGAPA v. SIDAIVA*

[I. L. R., 2 Bom., 624

2. ——— Charge on immovable property.—A claim for maintenance held not to be a charge upon immovable property. *BEER CHUNDER MANIKHYA v. RAJ COOMAR NOBODINEP CHUNDER DEB BURMONO*

[I. L. R., 9 Cal., 535; 12 C. L. R., 465

2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT.

3. ——— Power of Court to fix maintenance.—*Husband and wife.*—*Wife residing apart from husband.*—A Civil Court has power to fix the rate of maintenance payable by a husband to his wife, where she, for lawful cause, is residing apart from him, and to make an order that maintenance at that rate shall be paid in future, subject to be set aside or modified according to circumstances. *NOBO GOPAL ROY v. AMRIT MOYEN DOSSEN* . . . 24 W. R., 423

4. ——— Form of allowance.—*Fixed annual sum.*—*Share of income.*—*Widow.*—In a case where a Hindu widow is entitled to maintenance, it is better to award a fixed annual sum and not a share of the income of the estate. *JHUNNA v. RAMSARUP*

[I. L. R., 2 All., 777

5. ——— Calculation of amount.—*Maintenance of widows and daughters.*—The question of the adequacy of the maintenance granted to widows and daughters must depend in each case on its own peculiar circumstances. *DINOBUNDHOO CHOWDEY v. RAJMOHINEE CHOWDEY* . . . 15 W. R., 73

HINDU LAW—MAINTENANCE—continued.**2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—continued.****Calculation of amount—continued.**

6. ——— Maintenance.
Widow's right to.—*Arrears of maintenance.*—A widow has by Hindu law a right to maintenance, and the amount is to be determined on a consideration not merely of her absolute necessities, but also of the circumstances of her family. *SAKVAREBHAI v. BHAVANJI RAJE GHATJI ZANJARRA DESHMUKH* . . . 1 Bom., 194

7. ——— Widow's maintenance.—*Separate savings.*—In a suit by a widow against her stepson for separate maintenance on the ground of ill-treatment, the Court held that the ill-treatment being proved a reasonable maintenance ought to be provided. Taking the income tax return as evidence of the amount of defendant's income, Rs 5 a month out of an annual income of Rs 7,000 was held to be sufficient. In an enquiry of this kind any savings which a woman might make by living with her own family should not be taken into consideration; and the degradation which a Hindu widow is expected to live in, is a matter of ceremonial observance rather than of law. *HURRY MOHUN ROY v. NYANTARA* . . . 25 W. R., 474

8. ——— Stridhan.—*Hindu widow.*—*Semble.*—The stridhan of a Hindu widow should be taken into account in determining whether and to what extent she should have maintenance assigned to her. *SAVITRIBAI v. LUXMIBAI* . . . I. L. R., 2 Bom., 573

9. ——— Valuable moveable property.—*Jewels.*—The fact that a widow has in her possession jewels and other property unproductive of income does not deprive her of, or diminish her right to, maintenance; but if the property she possesses be productive, the amount should be taken into consideration in determining the allowance for maintenance. *SHIB DAYNE v. DOORGA PERSHAD*

[4 N. W., 63

10. ——— Discretion of Court.—The quantum of maintenance to be awarded is a question in the discretion of the Court, and the Privy Council will not interfere with such discretion unless strong grounds are shown for their so doing. *COLLECTOR OF MADURA v. MUTU RAMALINGA SATHUPATHY*

[I B. L. R., P. C., 1: 12 Moore's I. A., 397
10 W. R., P. C., 17

11. ——— Widow.—*Style of living in husband's lifetime.*—It is not necessary that a Hindu widow should be maintained in the same state in which her husband would maintain her. *KALLER-PERSAUD SINGH v. KUPPOO KOOWAREE*

[4 W. R., 65

12. ——— Annual proceeds of husband's share of family property.—A Hindu widow is not entitled to a larger portion of the annual produce of the family property as maintenance than the annual proceeds of the share to which

HINDU LAW—MAINTENANCE—continued.**2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—continued.****Calculation of amount—continued.**

her husband would have been entitled on partition if he were living. **MADHAVRAO KESHAV TILAK v. GUNGARAI** . . . **I. L. R., 2 Bom., 689**

13. ———— Penalty for vexatious defence.—Reduction of maintenance.—Case in which some of the elements in determining what is a suitable amount of maintenance for a Hindu widow out of her deceased husband's estate were considered. A Court is not justified in reducing, as a kind of punishment for vexatious defence to a suit, the amount of maintenance which it would otherwise have awarded. **NITTO KISSOREN DOSSEE v. JOGENDRO NATH MULLICK** . . . **I. L. R., 5 I. A., 55**

14. ———— Increase or decrease for sufficient cause.—There is nothing in the law to prevent an increase or a decrease of the amount of maintenance allowed to a Hindu widow, should sufficient cause be shown for either. The increase, if allowed, should be made from date of suit. **SREENAM BHUTACHARYA v. PUDDUMOOKHEE DEBIA** **9 W. R., 152**

15. ———— Widow.—Reduction of amount, Ground for.—Held, in a suit by a Hindu widow for maintenance, that the circumstance that she was not a childless widow, but had had a son who had died a minor subsequently to his father, was not a ground for reducing the allowance she would have been reasonably entitled to had she been a childless widow. **NARHAR SINGH v. DINGNATH KUAR** [**I. L. R., 2 All., 407**]

16. ———— Suit for reduction of maintenance where fund from which it is paid has decreased.—Right of suit.—A Hindu lady obtained a decree awarding her maintenance at a certain fixed rate and charging the assets of a certain firm with the payment of such maintenance. There was no provision in this decree that such rate was subject to any modification which future circumstances might render necessary. The assets of such firm having diminished, the proprietor of the same brought a suit for the reduction of such rate of maintenance. Held that such suit was maintainable. **RUKA BAI v. GANDA BAI** [**I. L. R., 1 All., 594**]

17. ———— Decrease of estate in value on which maintenance is charged.—A suit brought by a widow against the adopted son of her husband, for possession of her husband's estates, was compromised on the terms of a solenamah under which the defendant agreed to pay to the plaintiff a certain sum for maintenance, the same to be secured by assignment of the rents payable by certain ryots. Subsequently the holding, the rents of which were assigned, having become unfit for cultivation by reason of an inundation of salt water, and the defendant himself having become greatly impoverished by his estate having been injured by the same cause, the

HINDU LAW—MAINTENANCE—continued.**2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—continued.****Calculation of amount—continued.**

amount due for maintenance was not paid, and the widow brought a suit to recover that amount. Held that, inasmuch as the amount of maintenance must be taken to have been fixed with reference to the extent and value of the property, the Court had power to reconsider the allowance and to re-adjust it to the altered circumstances. **RAJENDRO NATH ROY v. PUTTO SOONDERY DASSEE** . . . **5 C. L. R., 18**

18. ———— Reduction in value of property on which maintenance is charged.—Natural equity.—A zemindar bequeathed the whole of his zemindari to his eldest son, leaving certain fixed stipends to his other children. In consequence of subsequent events the Court considered these stipends ought to be reduced. It was alleged that the value of the zemindari had been reduced by sale of a part of it; but as it was nowhere alleged that the sale had been occasioned by bad seasons, or acts of God, and not by the neglect of the person through whom the appellant claimed, the question of natural equity was held not to have arisen. **GREEN CHUNDER ROY v. SUMBHOO CHUNDER ROY** [**5 W. R., P. C., 98**]

19. ———— Suit to reduce rate awarded by decree.—S, a Hindu, obtained a decree for maintenance at a certain rate against R., her father-in-law. After the death of R., V., who was adopted by R., subsequent to the decree, sued S, to have the rate reduced, on the ground that the estate of R. which came to his hands was considerably diminished in value. Held that, as the estate had been diminished by the voluntary acts of R. and V., the claim could not be allowed. **VIJAYA v. SRIPATHI** [**I. L. R., 8 Mad., 94**]

3. ARREARS OF MAINTENANCE.

20. ———— Power to award arrears.—Arrears of maintenance may be awarded. **PIRTHI SINGH v. RAJ KORE** [**19 B. L. R., 238; 20 W. R., 21 I. R., I. A., Sup. Vol., 203**]

Affirming decision of Court below in [**2 N. W., 170**]

21. ———— Right to recover arrears.—Limitation.—No rule of Hindu law precludes the recovery of arrears of maintenance. The only bar to the enforcement of a purely legal right is the lapse of the time required by the law of limitations to bar the remedy. **VANKOPADHYAYA v. KAVARI HENGUSU** **2 Mad., 36**

SINTHAYEN v. THANAKAPUDAYEN alias PONDILY UDAYAN **4 Mad., 183**

22. ———— Limitation.—Hindu widow.—Demand and refusal.—Arrears of maintenance.—A Hindu widow has a legal right, irrespective of demand and refusal, to maintenance,

HINDU LAW—MAINTENANCE—continued.**3. ARREARS OF MAINTENANCE—continued.**Right to recover arrears—*continued.*

and may recover arrears for any period not excluded by the law of limitation applicable to her suit. *JIVI v. RAMJI* . . . **I L. R., 3 Bom., 207**

23. ——— Award of arrears.—Form of decrees.—Charge on property of husband.—Arrears of maintenance as well as prospective allowance during the widow's life awarded in the same decree, and held to be a charge on the property in the possession of the donee of her deceased husband. *NARADABAI v. MAHADEO NARAYAN* . . . **[I L. R., 5 Bom., 99]**

4. EFFECT OF DEATH OF RECIPIENT.

24. ——— Death of person maintained where sum has been awarded for maintenance.—Reversion to donor.—There seems no authority for the proposition that, on the death of junior members of a family to whom certain properties were awarded for maintenance, not only the property so awarded, but the profits made upon it by the donee, revert to the donor. *HURESHUR PRESHAD DOSS PUNBAJ v. GOCOLANUND DOSS MORAPATTUR* . **17 W. R., 129**

5. RIGHT TO MAINTENANCE.**(a) DAUGHTER.**

25. ——— Daughter living separate from father.—A daughter living apart from her father for no sufficient cause cannot sue him for maintenance. *ILATA SHAYATRI v. ILATA NARAYANNA NAMSUDRI* . . . **1 Mad., 373**

(b) GRANDMOTHER.

26. ——— Right of grandmother to maintenance.—Division of estate.—On a division of an estate, the Hindu law recognises the right of a grandmother to maintenance, but not her title to any share of the estate. *PUDUMMOOKEN DASSEE v. RAYHEMONNE DOSSEE* . . . **12 W. R., 409**

27. ——— Mortgagee selling the estate.—Right of residence secured on sale of house by mortgagee.—Although according to the *Mitakshara* a mother may, on partition, or if the estate is being wasted or her maintenance is not duly provided for, claim an assignment of a portion of the estate, yet she cannot call for partition, and her right to maintenance cannot affect a mortgage of the estate created before any portion has been assigned to her, except that, if the house she resides in is subject to the mortgage and is sold in execution of a decree upon the mortgage, the house must be sold subject to her right. *VENKATAMMAL v. ANDYAPPA CHETTI* . . . **[I L. R., 6 Mad., 130]**

(c) GRANDSON.

28. ——— Grandson or other more remote descendant of a Raja.—Impartible

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(c) GRANDSON—continued.**

Grandson or other more remote descendant of a Raja—continued.

raj.—Pachete raj.—In the case of the impartible raj of Pachete there is no law or custom under which any one, not being a son or daughter of a deceased Raja, can claim of right either maintenance or a grant in lieu of maintenance, from the person in possession for the time being of the raj. *NILMONEY SINGH DEO v. HINGU LALL SINGH DEO* . . . **[I L. R., 5 Cal., 256]**

(d) ILLEGITIMATE CHILDREN.

29. ——— Children of Sudra caste.—According to Hindu law illegitimate children of the Sudra caste can inherit, and are entitled to maintenance. *INDERAN VALUNGYFULY TAVER v. RAMASWAMY PANDIA TAVER* . . . **[3 B. L. R., P. C., 1: 12 W. R., P. C., 41 13 Moore's I. A., 141]**

Affirming S. C. in Court below, *PANDAYA TELAVAR v. PAJI TELAVAR* . . . **1 Mad., 478**

30. ——— Adult illegitimate son.—Bengal law.—An adult illegitimate son has not, by Hindu law as prevalent in Bengal, any right to maintenance. *NILMONEY SINGH DEO v. BANFESHUR* . . . **[I L. R., 4 Cal., 91]**

31. ——— Illegitimate son.—By Hindu law an illegitimate son has a claim only to maintenance, and an agreement not appearing to be made on valuable consideration between a nephew who was the legitimate heir of his uncle, and that uncle giving up the nephew's right to about 70 acres of land in favour of the illegitimate son of the uncle, was declared void as against the nephew. *SAKHARAM TRIMBAK v. RAM VALAD VITHAL APAJI* . . . **[1 Bom., 191]**

32. ——— Concubine.—Daughter-in-law.—Where the claimants to maintenance were the daughter-in-law, concubine, and illegitimate sons,—*Held* that the heirs were entitled to possession of the property, paying a sum equal to the whole of the profits to the persons entitled to maintenance if the profits are found to be insufficient to provide for their maintenance. *OMRAO SINGH v. MAN KOONWER* . . . **2 Agra, 136**

33. ——— Charge on impartible zemindari.—In a suit for maintenance brought by an illegitimate son of a Hindu zemindar, deceased,—*Held* that it was established that the plaintiff was the natural son of such zemindar, and recognised by him as such, it not having been essential to the plaintiff's title to maintenance that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar status therein. Case remanded for the Courts in India to try whether such maintenance can be a charge upon an impartible zemindari, or, if not, out

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(d) ILLEGITIMATE CHILDREN—continued.****Illegitimate son—continued.**

of what property or fund, if any, the son was entitled to be paid. **MUTUSWAMY JAGAVIRIA YETTAPPA NAIKAR v. VENKATASWARA YETTAPPA**

[2 B. L. R., P. C., 15: 11 W. R., P. O., 6
12 Moore's L. A., 208]

Upholding on this point the decision of the High Court, where it was held that the illegitimate son of a Sudra by a concubine, not being a female slave, is entitled to maintenance according to Hindu law. **MUTUSWAMY JAGAVIRIA YETTAPPA NAIKAR v. VENKATASUBHA YETTIA**, 2 Mad., 293

34. ————— Son of Sudra.

Charge on estate.—The illegitimate son of a zemindar of the Sudra caste is entitled to maintenance, and the maintenance is a charge upon the revenues of the zemindari. **COOMARA YETTAPPA NAIKAR v. VENKATASUBHA YETTIA**, 5 Mad., 405

35. ————— Charge on estate.

—According to Hindu law and usage, illegitimate sons are entitled to maintenance from their father, and his estate is liable for the payment of it. **Chaturya Ben Mundaan Syn v. Purhlad Syn**, 7 Moore's L. A., 18, followed. **Nurbibi v. Hussein Kall**, I. L. R., 7 Bom., 588, referred to. **PAROHAT v. ZALIM SINGH**, I. L. R., 4 E. A., 185

36. ————— Son of Sudra.

—The illegitimate son of a Sudra, his mother having been a married woman at the time of her forming an adulterous connection with his father, is entitled to maintenance out of his father's estate. **VIRABAMUTHI UDAXAN v. SINGARAVELU**

[I. L. R., 1 Mad., 306]

37. ————— Sons of female

slave or concubine.—**Obedience to head of family.**—It is immaterial whether the illegitimate sons have been begotten on a female slave or on a concubine. **Saraswati v. Manu**, I. L. R., 2 All., 184, followed. The test by which the continuance of the right to receive maintenance must be decided, is not the age of the illegitimate descendant, or his capacity to earn his own livelihood, but obedience to the head of the family. This test cannot be applied till he has reached full age. By docility or obedience in the sense of the texts is meant, the rendering to the head of the family such reasonable service as is ordinarily rendered by the cadets of a family in that station of life to which the parties belong. **HORGEBIND KUARI v. DHARAM SINGH**, I. L. R., 6 All., 329

38. ————— Issue of adult-

erous intercourse.—**Son of Sudra.**—A Sudra having kept the wife of another man in his house for many years as a concubine, had a son by her, whom he recognised as his own. In a suit brought by the son, who was of age, to recover maintenance from his putative father,—**Held** that he was entitled to recover. **KUPPA v. SINGARAVELU**

[I. L. R., 8 Mad., 325]

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(d) ILLEGITIMATE CHILDREN—continued.****Illegitimate son—continued.**

39. ————— Suit for partition by illegitimate son of undivided brother against sons of other brothers.—**Sudra caste.**—In a joint Hindu family of the Sudra caste, consisting of three brothers, two left legitimate sons and the third an illegitimate son. In a suit brought by the latter for partition of the family estate against his father's brothers' sons,—**Held** that he was not entitled to a share but only to maintenance. **RANOJI v. KANDOLI** [I. L. R., 8 Mad., 557]

(e) MOTHER.

40. ————— Parent and child.—**Duty of son to maintain aged mother.**—According to Hindu law a son is bound to support his aged mother, whether or not he has inherited property from his father. **SUBBARAYANA v. SUBBAKKA**

[I. L. R., 8 Mad., 236]

41. ————— Maintenance of mother on partition between her son and stepsons.—A widowed mother on a partition taking place between her son and her stepsons; of the property left by her husband, is not entitled to have the whole property charged with her maintenance, but only that portion of it which is allotted to her son on the partition. A separation in food and worship took place between a Hindu widow, her son, and her two stepsons, after which the widow lived as a member of her son's family, and was maintained by him. A partition of the moveable property having been made, a suit was brought by the son against the stepsons for partition of the immoveable property, and a decree was made defining the shares of the parties therein. That suit was brought and decreed pending a suit by the widow against her son and stepsons for maintenance from the date of the separation, and for fixing her future maintenance, in which suit she sought to have the maintenance charged on the whole estate left by her husband,—**Held** that, from the separation to the decree in the partition suit, the widow was entitled to maintenance charged on the whole estate; and subsequently to the decree to a charge on her son's share only. But inasmuch as she had during the former period been maintained by her son, and could not claim maintenance over again from her stepsons, whatever claim her son might have against them for contribution for her maintenance during that time, the suit as against them must be dismissed. Where the annual value of the whole estate was found to be Rs 70,000 and the proportionate annual value of her son's portion was Rs 28,333, Rs 150 a month was held under the circumstances to be a suitable maintenance. **KNDAB NATH COONDOD CHOWDHRY v. HEMANGINI DASGI**

[I. L. R., 13 Cal., 366]

(f) MOTHER-IN-LAW.

42. ————— Liability of son's widow for maintenance of her mother-in-law.—**Family house.**—**Proceeds of stridhan.**—Where a

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(f) MOTHER-IN-LAW.**

Liability of son's widow for maintenance of her mother-in-law—continued.

Hindu widow sued the widow of her pre-deceased son for maintenance, and it was found that the only property in the possession of the defendant were the proceeds of her own stridhuan and a family house, which yielded no rent and was jointly occupied by the plaintiff and defendant.—*Held* that the defendant was not liable for the maintenance claimed. *Savitribai v. Lakshmidai, I. L. R., 2 Bom., 578*, followed. *BAI KANKU v. BAI JADAV*

[*I. L. R.*, 8 Bom., 15

(g) SLAVE.

43. ——— Slave or chela.—Proof of deprivation of ordinary means of livelihood.—The fact of *A.*, having been long supported by *B.*, or of his having been purchased either as a slave or as a chela, will not entitle him to claim perpetual maintenance for himself and his heirs, especially where *A.* does not show that he has been deprived of ordinary means of livelihood which he might otherwise have commanded. *NARAIN DASS v. MAHATAB CHUND BAHADOOR* **7 W. R., 137**

(h) SON.

44. ——— Adult son.—According to the Hindu or Jain law, a father is not bound to maintain a grown-up son. *PREMOCHAND PEPARAH v. HULASCHAND PEPARAH* [*4 B. L. R., Ap., 23: 12 W. R., 494*

45. ——— Right of son to maintenance out of impartible property.—Right to partition.—A suit for maintenance out of ancestral estate by a Hindu son lies against his father where the property in the hands of the latter is impartible. *Quare*,—Whether a like suit lies where the son might sue for partition. *HIMMATSINGH BROHARSING v. GANPATISINGH* **12 Bom., 94**

46. ——— Maintenance, Right of adult son to.—Father with no partible property.—If a Hindu father possesses practically no partible property, his legitimate son, though adult, suffering from no disability to inherit, is entitled to maintenance from him. *RAMCHANDRA SAKHARAM v. SAKHARAM GOPAL*

[*I. L. R.*, 2 Bom., 346

47. ——— Adopted son when adoption is invalid.—Period between adoption and possession of estate.—A Hindu whose adoption is invalid is entitled to maintenance in his adopter's family. A son, whether adopted or begotten, can claim maintenance of his father until put into possession of his share of the ancestral property. *AYAVU MUPPANAR v. NILADATCHI ANMAL*

[*1 Mad.*, 45

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(A) SON—continued.**

Adopted son when adoption is invalid—continued.

48. ——— Right to maintenance, Nature of.—The adopted son of one whose alleged adoption has been held invalid can make no claim through his adoptive father to be maintained by the alleged adopter. The natural rights of a person adopted remain unaffected when the adoption is invalid. *Quare*,—Whether a right to maintenance can descend as an estate. *BAWANI SANKARA PANDIT v. AMBARAY ANMAL* **1 Mad., 363**

(c) SON'S WIDOW.

49. ——— Claim on father-in-law.—Father and son living jointly.—A Hindu father and son lived joint in food and worship, but separate in estate. *Held* that the widow of the son had no legal claim upon the father for maintenance. *RUJJOMONEY v. SIBOHUNDEE MULLICK* **2 Hyde, 103**

50. ——— Son's widow remaining chaste.—Right to choose residence.—According to Hindu law, a son's widow is entitled to maintenance so long as she leads a chaste life, whether she elects to live with her father-in-law or with her own relations. *KOODER MONNE DABBA v. TARA CHAND CHUCKERBUTTY* **2 W. R., 134**

RUTTAN CHAND SHROOBE v. HUREE MONNE [*5 W. R., 225*

51. ——— Son's widow residing with her father.—Liability of father-in-law for maintenance.—A Hindu died possessed of no property, but leaving a widow. On his death she left the house of her father-in-law, and went to reside at her father's house. Her father-in-law was not possessed of any ancestral property. *Held* that she could not sue her father-in-law for a sum of money on account of maintenance. *KHETRAMANI DAS v. KASINATH DAS* [*2 B. L. R., A. C., 15*
9 W. R., 413: 10 W. R., F. R., 89

UMACHARAN CHOWDHRY v. NITAMBINI DEBI [*2 B. L. R., S. N., 11*
10 W. R., 359

52. ——— Son's widow refusing to live with father-in-law.—Bengal and Mitakshara laws.—Under the Bengal law, the widow of a son who left no property cannot compel her father-in-law to make her a pecuniary allowance in lieu of maintenance if she refuses to reside in his house as a member of his family. But under the Mitakshara, the question is whether the father and son were joint in estate, and whether any joint estate was left by the son burdened with the payment of such maintenance. *HENNA KOORER v. AJOODHYA PERSHAD* [*24 W. R., 474*

53. ——— Grandson.—Misconduct of mother.—A widowed Hindu mother, who

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(i) SON'S WIDOW—continued.**

Son's widow refusing to live with father-in-law—continued.

refuses to dwell with her minor son in her father-in-law's house, and sells her infant daughter in marriage to a low-caste person, thereby injuring the social position of her father-in-law's family, is not entitled to recover maintenance on account of her son from her father-in-law. **MANMAHINI DAS v. BALAK CHANDRA PANDIT** . . . 8 B. L. R., 22: 15 W. R., 498

54. ——— The refusal of a widow to live in her father-in-law's house as one of his family does not disentitle her to maintenance. **VISALATCHI AMMAL v. ANNASAMY SASTRY** [5 Mad., 150

55. ——— Obligation of father-in-law to maintain son's widow.—A Hindu father-in-law is legally bound to maintain his deceased son's widow, notwithstanding that no property left by the son may have come into his hands. Where a father-in-law performs this duty in an imperfect manner as by ill-treating the widow and turning her out of his house, the Civil Courts will award her separate maintenance. **UDARAM SITARAM v. SONKABAI** [10 Bom., 483

56. ——— Right to maintenance as against a father-in-law where there is no family property.—A Hindu widow sued her father-in-law for maintenance for herself and her infant children. It was found that the defendant held no ancestral property, and that the property which he possessed was exclusively his own self-acquired property. Held that they had no legal right to be supported by the defendant, notwithstanding that they were in indigent circumstances. **KALU v. KASHIBAI alias LAKSHMIBAI** . . . I. L. R., 7 Bom., 127

(j) STEPMOTHER.

57. ——— Obligation of stepson to support stepmother.—*Family property.*—Under the Hindu law there is no legal obligation upon a stepson to support a stepmother independently of the existence in his hands of family property. **BAI DAYA v. NATHA GOBINDLAL** . . . I. L. R., 9 Bom., 279

58. ——— Stepmother and stepsister.—*Liability of zemindari property for, after partition.*—A suit was brought for maintenance by the stepmother and stepsister of a zemindar to be paid out of the income of the zemindari. The defendant contended that a partition having taken place of all the partible property of the family, and shares having been allotted to the defendant's stepbrothers, the sons and brothers of the plaintiffs, the plaintiffs' claim to maintenance was limited to the property of the defendant's brothers, and the plaintiffs had no claim to maintenance against the defendant. Held that the defendant was liable to pay and contribute to the maintenance of the plaintiffs, not only out of the

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(j) STEPMOTHER—continued.**

Stepmother and stepsister—continued.

partible property which he had obtained upon the partition, but also out of the income of the zemindari. **SIVANANJAN PERUMAL SETHURAYER v. MEENAKSHI AMMAL** . . . 5 Mad., 377

(k) WIDOW.

59. ——— Nature of widow's right.—*Maintenance to widow not expressed nor denied by will.—Gift of stridhwa.*—The right to maintenance being one given to a widow by the Hindu law, that right cannot be taken away except by express language to that effect. A gift of stridhwa is not equivalent to a provision for maintenance. **JOTTARA v. RAMHARI SIRDAR** . . . I. L. R., 10 Calc., 638

60. ——— Widow, Right of, to be maintained.—A Hindu widow has a right to be treated with kindness and suitably maintained. **RAMNATH ROY CHOWDHRY v. ARNER KALLY DEBIA** [W. R., 1864, 177

61. ——— *Mitakshara law.*—Widow with sons.—A Hindu widow has simply a right to be maintained out of her husband's property by Mitakshara law, where there are sons. **MEHREBAN SINGH v. SHRO KOOHWER** [1 Agra, 106

62. ——— *Destitute widow.*—A Hindu widow, if destitute of the means of living, is entitled to maintenance from her husband's relatives, although she may have shared her husband's estate, and supported herself for a long period by trading. **BAI LAKSHMI v. LAKSHMIDAS GOPAL DAS** . . . 1 Bom., 13

63. ——— *Joint ancestral property.*—It was held that a Hindu widow was entitled to be supported out of the joint ancestral estate of the family of which her husband was a member. **LALTI KUAR v. GANGA BISHAN** [7 N. W., 261

64. ——— *Right of widow to maintenance from relations with assets of husband.*—Although the relations of the husband of a Hindu woman, deserted by him, may not be under a personal liability to support her, yet, if they have property of the husband in their hands, his wife is entitled to be maintained out of the husband's estate to the extent of the proceeds of one-third thereof. **RAMABAI v. TRIMBAK GANESH DESAI** [9 Bom., 283

65. ——— *Relatives of husband.—Ancestral property.—Mitakshara law.*—Held, by the Full Bench, that a Hindu widow is not entitled, under the Mitakshara, to be maintained by her husband's relatives merely because of the relationship between them and her husband. Her right depends upon the existence in their hands of

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Widow, Right of, to be maintained—continued.**

ancestral property. *Held*, on the case being returned to the Division Bench, that the fact that the defendant in this case was in possession of ancestral immoveable property at the death of his son and had subsequently sold such property to pay his own debts, did not give the son's widow any claim to be maintained by him. *GANGA BAI v. SITA RAM*

[I. L. R., 1 All., 170

66. ———— *Relatives of husband.*—Ancestral property.—Widow voluntarily living apart from husband's relatives.—In the Island or Presidency of Bombay, a Hindu widow, voluntarily living apart from her husband's relatives, is not entitled to a money allowance as maintenance from them if they were separated in estate from him at the time of his death, nor is she entitled to such maintenance from them whether they were separated or unseparated from him at the time of his death, if they have not any ancestral estate or estate belonging to him in their hands. The doctrine, that in certain relationships and independently of the possession of ancestral estate, maintenance is a legal and imperative duty, while in other relationships it is only a moral and optional duty, discussed. *Semble*,—A Hindu widow, who has received a full share as and for her maintenance, cannot, when she has exhausted it, enforce from the relatives of her husband, or from the family estate, a further allotment, or a money allowance for maintenance. *S.*, a Hindu widow, voluntarily living apart from her husband's family, sued his paternal uncle, the nearest surviving male relative of her husband, for a money allowance as maintenance. *Held* that such suit was unsustainable for either of the two following reasons, *viz.*: 1, that the defendant was separated in estate from the plaintiff's husband at the time of his death; 2, that at the institution of the suit the defendant had not in his hands any ancestral estate, or any estate which had belonged to the plaintiff's husband. Decisions of the Bombay Sudder Adawlat on the right to maintenance reviewed. *Bai Lakshmi v. Lakhmidas Gopaldas*, 1 Bom., 18; *Chandrabhagabai v. Kashinath*, 2 Bom., 323; and *Timmappa v. Parmeshriamma*, 5 Bom., A. C., 130, disapproved. *Udaram Sitaram v. Sonkabai*, 10 Bom., 483, considered. *Rajjomonney Dossee v. Shibchunder Mullick*, 2 Hyde, 108; *Khetramani Dasi v. Kashinath Das*, 2 B. L. R., A. C., 15; and *Gangabai v. Sitaram*, I. L. R., 1 All., 170, approved and followed. *SAVITRIBAI v. LUXIMIBAI*

[I. L. R., 2 Bom., 573

67. ———— *Relatives of husband.*—Ancestral property.—In a suit by a Hindu widow against her husband's brother for an allowance as maintenance and for the expenses of a pilgrimage,—*Held* (following the case of *Savitribai v. Luximibai*, I. L. R., 2 Bom., 573) that the defendant was not liable, inasmuch as he was not in

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Widow, Right of, to be maintained—continued.**

possession of any ancestral property and had not received any property from the plaintiff's husband. *APAJI CHINTAMAN v. GUNGBAI*

[I. L. R., 2 Bom., 632

68. ———— *Private agreement, Effect of, on right.*—Widow residing in family-house.—Waiver of right to maintenance.—A right to maintenance bequeathed to a person is not affected by any private arrangement entered into by the members of the testator's family, who are liable to pay the maintenance as a charge on the testator's estate. A plaintiff, however, who has resided in and been supported by the family for twelve years after the testator's death without claiming the maintenance bequeathed to her, is presumed to have waived her right. *RAM LALL MOOKERJEE v. TARA SOONDREY DEBIA* W. R., 1864, 3

69. ———— *Obligation of husband's brother.*—Separation of widow.—*Held* that a Hindu widow is entitled to maintenance from her husband's brother, whether separated or not, notwithstanding the non-receipt by the latter of her husband's assets. There is nothing in the Hindu law to prevent the Court, in its discretion, awarding a widow separate maintenance. Former decisions commented on. *TIMMAPPA BEAT v. PARMESHRIAMMA*

[5 Bom., A. C., 130

70. ———— *Widow leaving husband's house.*—A widow's right to maintenance does not cease on her leaving her husband's house. *SREERAM BHUTTACHARJEE v. PUDDOMOOKHEE DEBIA* 9 W. R., 152

71. ———— *Widow leaving husband's house.*—A Hindu widow who, for no improper purpose, leaves her husband's family, does not thereby forfeit her right to maintenance. *AHOLLYA BHAI DEBIA v. LUCKHEE MONKE DEBIA*

[6 W. R., 37

72. ———— *Widow leaving husband's house.*—Where the maintenance of a Hindu widow was not made by her deceased husband dependent upon her living with his family, she is entitled to it, notwithstanding she leave the house of his family and go to that of her father. *SURNOMOYEE DASSEE v. GOPAUL LALL DOSS* Marsh., 497

73. ———— *Widow leaving husband's house.*—Widow in needy circumstances.—*Semble*,—Separation from her husband's family does not deprive a Hindu widow of her right to claim maintenance from them, if she happens to be in needy circumstances. *CHANDRABHAGABHAI v. KASHINATH VITHAL* 2 Bom., 341: 2nd Ed., 323

74. ———— *Widow leaving husband's house and family.*—Although the *Shastras* impose on a Hindu widow the duty of living with her

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Widow, Right of, to be maintained—continued.**

deceased husband's relatives, the duty has been regarded by the British Courts as a moral duty which they will not lend their aid to enforce, and of which the non-performance does not deprive the widow of her right to inherit. By consent of the parties, and for the protection of the estate, which consisted of cash, the Court ordered the amount to be invested in Government promissory notes in the joint names of the widow and brothers of the deceased, and directed that the interest should be paid to the sole receipt of the widow, with liberty for her to apply to the Court to order a sale if any necessity arose which would justify a sale under the Hindu law. **UMBIT KOWERKE v. KIDDERNATH GHOSH** . . . 3 Agra, 182

75. ———— Widow leaving

husband's house and family.—Separate residence.—The widow of a coparcener in a Hindu family is not entitled to separate maintenance in the absence of special circumstances necessitating her withdrawal from the family and separate residence. Authorities on the subject reviewed. The widow of a coparcener is not in Bombay entitled, as in Bengal, to her husband's share to use at her discretion for life. All she can strictly demand is a suitable maintenance when necessary, and whatever is required to make such a demand effectual. **RANGO VINAYAK DEV v. YAMUNABAI** . . . I. L. R., 3 Bom., 44

76. ———— Right to select residence.—By the Hindu common law the right of a widow to maintenance is one accruing from time to time according to her want and exigencies. A statute of limitation might do much harm if it should force widows to claim their strict rights and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable. In a suit brought by the widow against the eldest son for maintenance, it was pleaded that under the will of the husband it was a condition precedent to the plaintiff's right to maintenance that she should live under the same roof and in joint family with the defendant. It was further pleaded that there having been no demand and refusal of maintenance the plaintiff had no cause of action.—*Held* that there was no condition in the will making the plaintiff's right to maintenance dependent upon her living under the same roof with the defendant, and that she was, therefore, left in the ordinary position of a Hindu widow, in whose case separation from the ancestral home would not generally disentitle her to maintenance suitable to her rank and position. **NARAYAN-RAO RAMCHANDRA PANT v. RAMABAI**

[I. L. R., 3 Bom., 415
I. R., 6 I. A., 114]

77. ———— Right to select residence.—*Separate maintenance.*—A Hindu widow is not bound to reside with the family of her husband, and, if he were in union with them at the time of

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Widow, Right of, to be maintained—continued.**

his death, she is entitled to a separate maintenance where the family property is sufficiently large to admit of an allotment of separate maintenance to her. Where, however, the plaintiff, a Hindu widow, was satisfied for several years with the maintenance, *vis.*, Rs 16 per annum, fixed in an agreement executed by her and the defendant, and where the family of the husband was large and the family property small, the defendant being willing to maintain her in his house like the other members, the High Court declined to increase the amount, but gave the widow the right to elect between taking that sum and living separately, or accepting the defendant's offer to receive and maintain her in his own house in the same manner as the other members of his family. **RAMCHANDRA VISHNU BAPAT v. SAGUNABAI**

[I. L. R., 4 Bom., 261]

78. ———— Right of a widow to maintenance, although living apart from her husband's family.—A Hindu widow does not forfeit her right to maintenance out of family property chargeable therewith by reason of non-residence with the family of her husband, except such non-residence be for unchaste or immoral purposes. Where there is family property available for maintenance, it lies upon the parties resisting the claim to separate maintenance to show that the circumstances are such as to disentitle the widow thereto, *e.g.*, that she resides separately from her husband's family for immoral purposes, or that the family property is so small as not reasonably to admit of an allotment to her of a separate maintenance. **KASTURBAI v. SHIVAJIRAM DEVKURNA** . . . I. L. R., 3 Bom., 372

79. ———— Residence in husband's family-house.—Unchastity.—A Hindu widow is not bound to reside in her deceased husband's family-house; and she does not forfeit her right to maintenance out of her husband's estate by going to reside elsewhere, unless she leaves her husband's house for the purpose of unchastity or for any other improper purpose. **PIRTHEE SINGH v. RAJ KOORE** . . . 12 B. L. R., 238

[20 W. R., 21
I. R., I. A., Sup. Vol., 208]

Affirming decision of Court below in

[2 N. W., 170]

80. ———— Act XXI of 1850.—Unchastity.—Loss of caste.—Forfeiture of rights of property.—Since Act XXI of 1850 came into force, mere loss of caste does not occasion a forfeiture of rights of property. A Hindu widow entitled to a bare or starving maintenance under a decree made in a suit, brought by her for maintenance against the representatives of her deceased husband, is not to be deprived of the benefit of that decree by the fact that she has, since its date, been leading an incontinent life. **Pirthee Singh v. Raj**

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Widow, Right of, to be maintained—continued.**

Kower, 19 B. L. R., 288; 20 W. R., 21, distinguished. HONAMA v. TIMANNABHAT. I. L. R., 1 Bom., 559

81. ————— Unchastity.

An unchaste widow is not entitled to a bare maintenance. *Honama v. Timannabhat, I. L. R., 1 Bom., 559, followed. VALU v. GANGA*

[I. L. R., 7 Bom., 84

82. ————— Decree liable to

be set aside or suspended for unchastity.—A decree obtained by a Hindu widow declaring her right to maintenance is liable to be set aside or suspended in its operation on proof of subsequent unchastity given by her husband's relatives, either in a suit brought by them expressly for the purpose of setting aside the decree, or in answer to the widow's suit to enforce her right. *VISHNU SHAMBHOG v. MANJAMMA. I. L. R., 9 Bom., 106*

83. ————— Charge on property for maintenance.—*Sale of estate.*—A Hindu widow's claim to maintenance upon an estate does not necessarily render the sale of the property subversive of her right; for even if there be no other property out of which that maintenance can be derived, there is nothing to prevent her from suing to establish her right to make her maintenance a charge upon the property sold. *ANUND MOYEE GOOPTO v. GOPAL CRUNDER BANERJEE. W. R., 1864, 310*

84. ————— Husband's property.—A wife is under the Hindu law, in a subordinate sense, a co-owner with her husband; he cannot alienate his property, or dispose of it by will, in such a wholesale manner as to deprive her of maintenance. *Held, therefore, where a husband in his lifetime made a gift of his entire estate leaving his widow without maintenance, that the donee took and held such estate subject to her maintenance. JAMNA v. MAOHUL SARU. I. L. R., 2 All., 315*

85. ————— Husband's property.—*Gift of his property by a husband in fraud of his widow's right to maintenance.*—*Nature of wife's interest in her husband's property.*—*Right to partition.*—*Transfer by her of her interest.*—*Release to her husband.*—*Arrears and future maintenance a charge on property of deceased husband.*—A Hindu husband cannot alienate, by a deed of gift to his undivided sons by his first and second wives, the whole of his immoveable property, though self-acquired, without making for his third wife, who is destitute and has not forfeited her right to maintenance, a suitable provision to take effect after his death. After the husband's death she is entitled to follow such property in the hands of her stepsons to recover her maintenance, her right to which is not affected by any agreement made by her with her husband in his lifetime. A Hindu wife has no property or co-ownership in her husband's estate, in the ordinary sense, which involves

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Charge on property for maintenance—continued.**

independent and co-equal powers of disposition and exclusive enjoyment. Her right is merely an inchoate right to partition which she cannot transfer or assign away by her own individual act; and, unless such right has been defined by partition or otherwise, it cannot be released by her to her husband. *NARRADABAI v. MAHADRO NARAYAN*

[I. L. R., 5 Bom., 99

86. ————— Husband's property.—*Charge on property alienated by heirs.*—*Held* that the widow's right to maintenance being a charge on the property forming her deceased husband's estate, remains claimable out of the property, notwithstanding its alienation by the heirs, unless she bargains to forego it. *HEERA LALL v. KOUSILLAH* [2 Agra, 42

TARUNGINN DASS v. CHOWDEY DWARKANATH MUSSAFT. 20 W. R., 196

87. ————— Liability of heir.

—The heir who takes and becomes possessed of the estate of the deceased must be held to continue to be primarily responsible both in person and property, for the maintenance of the widow, even though he should have fraudulently transferred that estate, or otherwise have improperly vested it, and the widow is bound to look to the heir for her maintenance, and to claim it from him primarily rather than from the estate transferred or wasted, which may nevertheless be in the last resort answerable to her claim. *RAMCHURN TEWARIE v. JUSSODA KOONWER*

[2 Agra, 134

88. ————— Nature of charge.

—The maintenance of a widow is by Hindu law a charge upon the whole estate, and therefore upon every part thereof. *RAMCHANDRA DIKSHIT v. SAVITRIBAI. 4 Bom., A. C., 73*

89. ————— Family property.

—A Hindu widow's maintenance is a charge upon the family estate in whosoever hands the estate may fall. *KHUKBOO MISRAIN v. JHOOMYUK LALL DASS* [15 W. R., 263

90. ————— Family property.

—*Mitakshara law.*—*Moveable ancestral property.*—*Property liable for maintenance.*—*Immoveable property purchased with profits.*—Under the Mitakshara law moveable ancestral property which remains in the hands of a father, and has not been partitioned among his sons, is to be regarded as a fund chargeable with the maintenance of those members of the family who under Hindu law have claims for maintenance on the undivided estate of the family. All ancestral property is, while it remains undisposed of and unpartitioned, charged with the maintenance of all persons who are entitled to maintenance from the estate. Immoveable property

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Charge on property for maintenance—continued.**

purchased with the capital or profits of ancestral moveable property does not retain the character of ancestral moveable property, but those incidents attach to it which ordinarily attach to immoveable property acquired by and inherited from an ancestor. A Hindu widow with a minor son is as much entitled as a childless widow to maintenance. Where a husband dies living separate estates and also an undivided share in joint family property, the widow's maintenance should be met first out of the profits of the separate estates; but if these are insufficient, there is nothing in the circumstance that the husband left separate estates which would debar the widow from having recourse to the joint estate to meet the deficiency. **SHIB DAYEE v. DOORGA PRESHAD**

[4 N. W., 63]

91. ——— Right of widow to follow property into hands of purchaser.—Liability of heir.—Under the Hindu law, property purchased from the heir with notice that a widow is entitled to be maintained out of it, continues, while in the hands of the purchaser, to be charged with that maintenance. Before following properties from which she is entitled to obtain her maintenance in the hands of the purchaser, a Hindu widow is not bound in all cases to attempt recovering her maintenance from the heir-at-law. **GOLUCK CHUNDER BOSE v. OHILLA DATEN** **25 W. R., 100**

92. ——— Suit for arrears of maintenance.—Charge on estate of husband in hands of coparcener.—In a suit by the widow of one undivided brother against the survivor for maintenance, on the question of past maintenance, Held that the husband's estate in the hands of the survivor was that to which the charge attached, and that the husband's death was the period from which the Act of Limitations began to run against the claim. **SUBBRAMANIA MUDALIAR v. KALIANI AMMAL**

[7 Mad., 226]

93. ——— Widow's right to have maintenance charged on inheritance.—A Hindu widow entitled to maintenance may have the payment thereof secured by a charge on part of the inheritance in the hands of the heir. **MAHALAKSHMANNA v. VENKATARATNAMMA**

[I. L. R., 6 Mad., 83]

94. ——— Charge of ancestral land encumbered with debt of family and redeemed with self-acquired funds by one member.—A Hindu widow is entitled to charge on account of her maintenance a piece of land in the possession of her father-in-law (the defendant), which formed a portion of the ancestral property of the family, and had been allotted on partition to defendant, encumbered with a mortgage-debt of the family to the full value, and which had, subsequently to the partition in the lifetime of the plaintiff's husband, been redeemed by the

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Charge on property for maintenance—continued.**

defendant with self and separately acquired funds. **VISALATCHI AMMAL v. ANNABAMY SASTRY**

[5 Mad., 150]

95. ——— Purchaser for value, and bond fide right of widow against.—The maintenance of a Hindu widow is not a charge on any ancestral property in the hands of a bond fide purchaser from her late husband's successors any more than the payment of unsecured debts due by the family. The proposition in *Ramchurn Tewares v. Jasooda Koomer*, 2 Agra, 184, that the liability of family property, in the hands of a purchaser, for the maintenance of a widow, depends on the ability of her husband's heir to support her, dissented from. **LAKSHMAN RAMCHANDRA v. SARASVATIBAI**

[12 Bom., 69]

96. ——— How far maintenance is a charge on husband's estate.—Notice.—As against one who takes as heir, a Hindu widow has a right to maintenance out of the property in his hands. She also has a right to maintenance out of such property in the hands of any one who takes it with notice of her having set up a claim for maintenance against the heir. By the law of Bengal she has no lien on the property for her maintenance against all the world irrespective of such notice. **BHAGABATI DAS v. KANAI LALL MITTER**

[8 B. L. R., 225; 17 W. R., 433, note]

JUGGERNATH SAWUNT v. ODHIRANEE NARAIN KOOMAREE **20 W. R., 123**

See **NISTARINI DAS v. MAKHUNLALL DUTT**
[9 B. L. R., 11; 17 W. R., 432]

97. ——— Lien on estate of husband.—Notice of lien.—Bond fide purchaser.—The lien of a Hindu widow for maintenance out of the estate of her deceased husband is not a charge on that estate in the hands of a bond fide purchaser irrespective of notice of such lien. A Hindu widow, before she can enforce her charge for maintenance against property of her deceased husband in the hands of a purchaser from his heir, must show that there is no property of the deceased in the hands of the heir. Debts contracted by a Hindu take precedence of his widow's claim for maintenance, and *semble*, that if a portion of his property is sold after his death to pay such debts, the widow cannot enforce her charge for maintenance against such property in the hands of the purchaser. *Quere*,—Whether a Hindu widow, by obtaining against her husband's heir a personal decree for maintenance unaccompanied by any declaration of a charge on the estate, does not lose her charge upon the estate. **ADHIRANEE NARAIN COOMARY v. SHONA MALEE PAT MAHADAI** **I. L. R., 1 Calc., 365**

98. ——— Charge on estate in the hands of purchaser with notice.—Notice.—In a suit for maintenance brought by a Hindu widow

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Charge on property for maintenance—continued.**

against her husband's brother, who was the sole surviving member of that husband's family, and against *bond fide* purchasers for value from him (the defendant) of certain immoveable ancestral property of the family.—*Held* the mere circumstance that such purchasers had notice of her claim is not conclusive of the widow's rights against the property in their hands. If the property were sold in order to pay debts (not incurred for immoral purposes) of her husband, or his father, or grandfather, or for the benefit of the undivided family, or to satisfy a former decree obtained by the plaintiff herself against the same defendant for maintenance, such sale would be valid against her, whether or not the purchasers had notice of her claim. *Per WEST, J.*—According to the Mitakshara, sons must, from the moment of their father's death, be regarded as sole owners of the estate, yet with a liability to provide for the maintenance of their father's widow, and with a competence on the widow's part to have the estate made answerable. If the sons make a division of the estate, they must allot to their mother an equal share, and the same to any sonless widow of their father. The widow has no proprietorship in the estate before its partition, but she has an equity to a provision, which the Court will enforce to guard her against attempted fraud. The debts of the deceased owner take precedence of the maintenance of the widow. The estate is properly applied, in the first instance, by the sons as managers in payment of such debts. By a sale of the property the sons cannot evade a personal liability to provide for the widow. If a mother, foregoing her claim to a separate provision out of the paternal property, resides with her sons or stepsons, and is maintained by them, she must submit to their dealing with the estate. A fraudulent alienation for the purpose of defeating her claims will not be supported, but the particular assignee for value acquires a complete title. In the case of a widow of an ordinary coparcener as against the surviving members of the joint family, her claim being strictly to maintenance only, regulated by the circumstances of the joint family, it appears that, although she may have her maintenance made a charge on the property, yet, if she should refrain from that course, she leaves to the coparceners an unlimited estate to deal with at their discretion and in good faith. If there is an ample estate left, out of which to provide for the widow, or, if knowing of a proposed sale she does not take any step to secure her own interest, no imputation of bad faith, or of abetting it, can be made against the purchaser of a portion of the joint property. If the widow, on the other hand, is not accepting support from the coparcener, if she lives apart, and if the estate is small and insufficient, it is the vendee's duty, before purchasing, to enquire into the reason for the sale, and not by a clandestine transaction to prevent the widow from asserting her right against the intending vendor. It is in this connection that the doctrine of notice becomes of import-

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Charge on property for maintenance—continued.**

ance. The knowledge of collateral rights created by agreement in equity frequently qualifies those acquired by a purchaser. The widow's right to maintenance is a right maintainable against the holders of the ancestral estate in virtue of their holding no less through the operation of the law than if it had been created by agreement, and so when the sale prevents its being otherwise satisfied it accompanies the property as a burden annexed to it in the hands of a vendee with notice that it subsists, though equity as between the vendee and the vendor will make the property retained by the latter primarily answerable. Whether such a claim by a widow against the estate of her deceased husband in the hands of a purchaser is enforceable or not, does not depend upon whether the remainder of the estate in the hands of the heir has been exhausted. What was honestly purchased is free from her claim for ever. What was purchased in furtherance of a fraud upon her, or with knowledge of a right which would thus be prejudiced, is liable to her claim from the first. The relations of the parties are determined once for all at the moment of the sale. There is no authority for the doctrine which makes the claim of widows not entitled to a share of property, in case of partition, a real charge on the inheritance, and ranks the claim of widows who are so entitled as a mere moral obligation. In all cases it is a claim to maintenance merely, not interfering (so long as it has not been reduced to certainty by a legal transaction) with the right of the actually participant members to deal with the property at their discretion, provided this dealing is honest and for the common benefit. The reduction of the number of surviving coparceners to a single person makes no difference in the widow's legal position. The rights and obligations of the original coparceners fall at last to the sole survivor. The widows must be maintained by him out of the property, but he may still deal with the estate at his discretion in the absence of actual fraud or of a decree which has converted some widow's claim into an actual right *in re*. The purchaser from him takes a perfectly good title, and one which, if good at the time, cannot be impaired by subsequent changes in the circumstances of the vendor's family. Authorities on the subject of Hindu widow's maintenance reviewed. *LAKSHMAN RAMCHANDRA v. SATYABHAMBABAI* . . . **I. L. R., 2 Bom., 494**

See DALSUKHRAM MAHASUKHRAM v. LALLUBHAI MOTICHAND . . . **I. L. R., 7 Bom., 282**

99. ————— **Charge on husband's estate.**—*Bond fide purchaser for value without notice.*—The maintenance of a Hindu widow is not, until it is fixed and charged on her deceased husband's estate by a decree or by agreement, a charge on such estate which can be enforced against a *bond fide* purchaser of such estate for value without notice. When the maintenance of a Hindu widow has been expressly charged on her husband's

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(k) WIDOW—continued.****Charge on property for maintenance—continued.**

estate, a portion of such estate will be liable to such charge in the hands of a purchaser, even if it be shown that the heirs to such estate have retained enough of it to meet such charge; but such estate will not be liable if its transfer has taken place to satisfy a claim for which it is liable under Hindu law, and which under that law takes precedence of a claim of maintenance. *SHAM LAL v. BANNA*

[*I. L. R.*, 4 *ALL.*, 296]

100. ——— *Charge for, on ancestral property.—Liability of purchaser for arrears of maintenance.*—A decree obtained by a Hindu widow for maintenance directed that certain ancestral property, which *D.* and *S.* had purchased, should be liable in their hands for the payment of the maintenance allowance. *Held* that the widow was not entitled, by virtue of such decree, to recover arrears of the allowance from *D.* and *S.* personally, after such property had left their hands. *DHARAM CHAND v. JANKI*

[*I. L. R.*, 5 *ALL.*, 389]

101. ——— *Property sold in execution of decrees for maintenance.—Subsequent suit to recover maintenance, and to follow property in hands of auction-purchaser.*—A Hindu widow's right to recover maintenance is subject to the right of a purchaser of a portion of the family estate for valid consideration. *A.* obtained a personal decree against *B.* for maintenance; at the sale in execution of this decree a portion of the family property was sold and purchased by *C.* At this sale the widow gave notice that she claimed a right to recover maintenance from the family property. In a subsequent suit by *A.* against *B.* and *C.* to recover arrears of maintenance, *A.* sought to follow the property in the hands of *C.* *Held* that the fact of such notice being given at the time of the auction-sale would not affect the rights of the auction-purchaser *C.*, he having purchased at an auction-sale held under a decree obtained in satisfaction of a valid family debt. *SOORJA KOBH v. NATH BUKSH SINGH*

[*I. L. R.*, 11 *Cal.*, 102]

102. ——— *Maintenance, Right to, out of confiscated property.*—A Hindu widow held not entitled to maintenance out of property belonging to her husband which had become forfeited to Government on his conviction for rebellion. *GUNGA BARR v. HOGG*

[2 *Ind. Jur.*, N. S., 124]

(l) WIFE.

103. ——— *Wife's right to maintenance.—Separate maintenance.—Ground for living apart from husband.*—Although by Hindu law a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(l) WIFE—continued.****Wife's right to maintenance—continued.**

or other justifying cause, she is compelled to live apart from him. *SIDDLINGAPA v. SIDAVAL*

[*I. L. R.*, 2 *Bom.*, 634]

104. ——— *Wife leaving husband's house without sanction.*—Under the Hindu law, a wife who, without her husband's sanction, leaves him to live with her own family, has no right to ask maintenance from her husband. *KULLYANESUREE DEBEE v. DWARKANATH SURMA*

[6 *W. R.*, 116]

105. ——— *Wife leaving husband's house without objection.*—Where a Hindu wife had left her husband's house and carried on an independent calling, and the husband did not object to the calling or give her notice to return.—*Held* that as she was desirous of returning, and the husband declined to maintain her, she was entitled to maintenance. *NITTE LAHA v. SOONDAREE DASSEE*

[9 *W. R.*, 475]

106. ——— *Right of wife to.—Husband's second marriage.*—A Hindu wife is not entitled to maintenance if she leaves her husband without a justifying cause. The husband's marrying a second wife is not such justifying cause. Where, therefore, a Hindu husband married a second wife, and his first wife thereupon left him.—*Held* that the first wife had no implied authority to borrow money for her support. *VIKASVAMI CHETTI v. APASVAMI CHETTI*

[1 *Mad.*, 375]

107. ——— *Wife compelled to leave husband's house on account of misconduct of husband.*—A Hindu kept a Mahomedan mistress, and by such conduct compelled his wife under her religious feelings to leave the house. She went and resided with her mother, and continued to live in chastity. *Held* the husband was bound to give maintenance to his wife. *LALA GOBIND PRASAD v. DOULAT BATTI*

[6 *I. L. R.*, Ap., 85; 14 *W. R.*, 451]

108. ——— *Justification for wife leaving husband.—Unkindness or neglect.—Cruelty.—Criminal Procedure Code, 1872, s. 536.*—Under Hindu law, mere unkindness or neglect short of cruelty would not be a sufficient justification for a wife in leaving her husband's house. Reference being had to the first Code of Criminal Procedure (XXV of 1861) and to the existing Code, X of 1872, section 536, unless a husband refuses to maintain his wife in his house, or has been guilty of acts of cruelty which would justify her in leaving his protection, she is not entitled to maintenance while living apart from her husband. *SITANATH MOOKERJEE v. HAIMABUTTY DASSEE*

[24 *W. R.*, 377]

109. ——— *Adulteress living apart from her husband.*—A Hindu adulteress living apart from her husband cannot recover maintenance from him so long as the adultery is uncon-

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(1) WIFE—continued.****Wife's right to maintenance—continued.**

doned. *ILLATA SAVATRI v. ILLATA NARAYAN NAM-BUDRI* 1 Mad., 372

110. ————— A woman divorced for adultery who had continued in adultery during her husband's life, and in unchastity after his death, is not entitled to maintenance out of the property of her deceased husband according to Hindu law. *MUTTAMMAL v. KAMAKSHY AMMAL*

[2 Mad., 337]

111. ————— *Aliyasantana law.*—*Liability of husband to maintain wife.*—A female, who is a member of a family governed by the Aliyasantana system of law, living apart from the family with her husband, is not entitled to a separate allowance for maintenance out of the income of the family property. *Sembla.*—The husband is bound to maintain his wife out of his self-acquired means so long as she continues to live with him. *SUBBU HEGADI v. TONGU* 4 Mad., 198

112. ————— *Sagai wife.*—*Marriage, Validity of.*—*Quare.*—Whether a Sagai wife is entitled to maintenance. *JHUBHOO SAHOO v. JUPODA KOOMB* 17 W. R., 230

113. ————— *Daughter's right.*—*Residence.*—*Marriage expenses.*—*Hindu embracing Mahomedanism.*—J., a Hindu, embraced the Mahomedan religion and married a Mahomedan woman whom he took to live with him. At the time of his conversion he had a Hindu wife who, together with her minor daughter, now instituted a suit against him, praying, (1) for an allowance by way of maintenance; (2) that the allowance might be fixed as a charge on specific property belonging to the defendant; (3) for an order compelling the defendant to provide the plaintiffs with a separate house for their residence; and (4) that a sum of Rs. 4,000 might be awarded to them to defray the marriage expenses of the minor plaintiff. *Held* that the defendant ought not to be compelled to provide residence for the plaintiffs, inasmuch as the allowance awarded to them should cover all such expenses as maintenance and house rent, and that the claim of Rs. 4,000 for the minor plaintiff's marriage expenses should be rejected, since it was not shown that any marriage expenses had been incurred or were at present required for her, and since if she lived to reach a marriageable age, the matter would then be in the hands of her guardian. *Held*, further, that the right of the wife and daughter to be maintained out of the husband's and father's property was undoubted, and that when the Court has made an order directing a sum to be paid by way of maintenance, it has undoubtedly the power to ensure the enforcement of its order, and this could best be done by fixing the allowance to be a charge on specific property. *Jamna v. Machul Sahu, I. L. R., 3 All., 315; Ramabai v. Trimbak Ganesh Desai, 9 Bom., 293; Sham Lal v. Banna, I. L. R., 4 All., 296; and Mahalakshamma Garu v. Venkatacat-*

HINDU LAW—MAINTENANCE—continued.**5. RIGHT TO MAINTENANCE—continued.****(1) WIFE—continued.****Wife's right to maintenance—continued.**

namma Garu, I. L. R., 6 Mad., 83, referred to
MANSHA DEVI v. JIWAN MAL

[I. L. R., 6 All., 617]

114. ————— *Woman living in adultery.*—*Right to maintenance from paramour.*—A woman living in adultery formed a temporary connexion with a man by whom she had a son. *Held* that she could not maintain a suit for maintenance against her paramour. *SIKKI v. VENKATASAMY GOUNDEN* 8 Mad., 144

115. ————— *Woman marrying again in lifetime of husband.*—*Right to maintenance.*—Among the Sompara Brahmins a widow who has re-married in the lifetime of her first husband without his consent cannot be regarded as the lawful wife of her second husband, but she is entitled to maintenance as his concubine. *KHEMKOR v. UMIA-SHANKAR RANCHHOR* 10 Bom., 381

116. ————— *Charge on husband's estate.*—*Transfer of estate for payment of debts.*—The *bond fide* purchaser for value of the estate of a Hindu husband, sold in order to satisfy the husband's debts, does not take such estate subject to the wife's maintenance, even if such maintenance is fixed and charged on the estate. *Jamna v. Machul Sahu, I. L. R., 3 All., 315; and Sham Lal v. Banna, I. L. R., 4 All., 296, referred to.* *GUR DAYAL v. KAUNSILA* I. L. R., 5 All., 367

117. ————— *Right of maintenance against purchaser at sale for payment of a family debt.*—Though the maintenance of a wife and children may in certain circumstances be a charge on the husband's property as against a purchaser, it is not so in a case in which the sale took place in payment of a family debt which it was the primary duty of the head of the family to pay. *NATCHIARAMMAL v. GOPALAKRISHNA* I. L. R., 2 Mad., 126

HINDU LAW—MARRIAGE.

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1. INFANT MARRIAGE, THEORY OF—	2437
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See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION—RE-MARRIAGE.

1. INFANT MARRIAGE, THEORY OF.

1. ——— Infant marriages.—Presumption of age.—Age of discretion.—The foundation for infant marriages among Hindus is the religious obligation which is supposed to lie on parents to provide for a daughter, so soon as she is *matura viro*, a husband capable of procreating children; the custom being that, when that period arrives, the infant wife permanently quits her father's house, to which she had returned after the celebration of the marriage ceremony, for that of her husband. The presumption, therefore, is, that the husband, when called upon to receive his wife for permanent cohabitation, has attained the full age of adolescence and also the age which the law fixes as that of discretion. *JUMOONA DASSYA v. BAMA SUNDARI DASSYA*

[I. L. R., 1 Cal., 289; 25 W. R., 235
I. R., 3 I. A., 72]

2. RIGHT TO GIVE IN MARRIAGE, AND CONSENT.

2. ——— Right of giving away daughter in marriage.—Delegation of authority.—Though by the Hindu law no one but the father while he is alive can give his daughter in marriage, yet the father can delegate his authority to another. *GOLAMKE GOPHER GHOSH v. JUGGESHUR GHOSH*

[8 W. R., 198]

3. ——— Guardian of daughters.—The plaintiff, the divided brother of the defendant's deceased husband, sued to obtain a declaration of his independent legal right to betroth the infant daughters of his deceased brother by the defendant to persons of his own choosing without the interference of the defendant, and of her obligation to accept any persons whom he might select and provide for the celebration of their marriages. *Held* that the exclusive right sought to be enforced by the plaintiff was not warranted by Hindu law, apart from the legal position and rights of the defendant as the guardian of her daughters and possessor of her husband's property, which, however, presented still stronger grounds of objection to the plaintiff's claim. *NAMASEVAYAM PILLAY v. ANNAMMI UMMAL*

[4 Mad., 339]

4. ——— Consent of guardian to marriage.—Effect of want of consent.—The want of a guardian's consent will not invalidate a marriage otherwise legally contracted and performed with all the necessary ceremonies. *MUDOSOODUN MOOKERJEE v. JADUB CHUNDER BANERJEE*

[8 W. R., 194]

HINDU LAW—MARRIAGE—continued.**3. BETROTHAL.**

5. ——— Betrothal how far treated as marriage.—Sembie.—That according to Hindu law, a betrothal is not to be treated as an actual and complete marriage. *UMED KIKI v. NAGINDAS NAROTUNDAS*

7 Bom., O. C., 122

6. ——— Betrothal, Suit to enforce.—Ceremonies of betrothal.—The plaintiff, on behalf of her infant son, sued the father and guardian of *M. B.* to recover possession of *M. B.*, alleging that *M. B.* had been betrothed to her son, and that, under the Hindu law, betrothment was the same as marriage and could not be repudiated, and that the defendant had, on demand, refused to give up *M. B.* The defendant pleaded, *inter alia*, that the betrothment had been repudiated, as the family to which the plaintiff belonged were guilty of female infanticide, and that it would be illegal, under the Hindu law, to enter into relationship with it. *Held* that as, according to Hindu law, a betrothment is effected by the bride and bridegroom walking seven steps hand in hand during a particular recital, and the contract is perfected upon their arriving at the seventh step, and may be enforced by the husband on completion of the time, and as the evidence adduced did not show, nor was it alleged or pretended, that any betrothment had been effected or perfected in the way above described, the suit was maintainable. *NOBUT SINGH v. LAD KOOR*

5 N. W., 102

4. CEREMONIES.

7. ——— Boring of the ears.—Necessary ceremonies.—Sudras.—The boring of the ears is not one of the ten initiatory ceremonies of marriage; it is unnecessary even for a twice-born Hindu: and all ceremonies except that of marriage are dispensed with in the case of Sudras. *MONEMOTHONATH DEY v. AVSHOOTOSH DEY*

1 Ind. Jur., O. S., 24

8. ——— Ceremony of rasee bibaho.—Custom.—The question whether the ceremony of rasee bibaho was a part of the marriage ceremony during the continuance of which gifts to the bride came under the denomination of *yantuka*, was held in this case to depend on the custom of the district in the caste to which the parties belonged. *BISTOO PERSHAD BURREAL v. RADHA SOONDUR NATH*

[16 W. R., 304]

9. ——— Ceremony of nandimukh or bridhi-shradh.—Restitution of conjugal rights.—Consent of lawful guardian.—Presumption of validity of marriage.—Non-performance of ceremonies.—The ceremony of nandimukh or bridhi-shradh is not an essential of Hindu marriage, nor would the want of consent by the lawful guardian necessarily invalidate such marriage. In a suit for restitution of conjugal rights the fact of the celebration of marriage having been established, the presumption, in the absence of anything to the contrary, is that all the necessary ceremonies have been complied with. *BRINDABUN CHUNDEA KURMOKAR v. CHUNDEA KURMOKAR*

I. L. R., 12 Cal., 140

HINDU LAW—MARRIAGE—continued.**4. CEREMONIES—continued.**

10. ———— **Consummation ceremony.**—*Marriage.—Consummation.*—According to Hindu law, a marriage between Brahmans is binding although the consummation ceremony or consummation never takes place. **ADMINISTRATOR GENERAL, MADRAS v. ANANDACHARI** . . . **I. L. R., 9 Mad., 466**

5. VALIDITY OR OTHERWISE OF MARRIAGE.

11. ———— **Marriage between persons of different castes.**—*Custom.*—The general Hindu law being against a marriage between persons of distinct castes (*e.g.*, Domes and Harees), local custom can alone sanction it. **MELARAM NUDIAL v. THANOORAM BAMUN** . . . **9 W. R., 552**

12. ———— **Sudras.**—*Custom.*—*Per MITTER, J.*—Marriage between parties in different subdivisions of the Sudra caste is prohibited unless sanctioned by any special custom, and no presumption in favour of the validity of such a marriage can be made, although long cohabitation has existed between the parties. *Per MARKBY, J.*—*Quare.*—Whether there is any legal restriction upon such a marriage. **NARAINA DHAR v. RAKHAL GAIN** [**I. L. R., 1 Calc., 1: 23 W. R., 334**]

13. ———— **Marriage of widow with husband's brother.**—*Jats in North-Western Provinces.*—Among the Jats of the North-Western Provinces *kura* durescha, or the marriage of a widow with the brother of a deceased husband, is common and is recognised as lawful, and the children of such marriage are legitimate and entitled to inherit an equal share of the estate of their father as his other sons. **POORUNMULL v. TOOLSEE RAM** [**3 Agra, 350**]

14. ———— **Asura form of marriage.**—*Nagar Vissa Vania caste.*—*Palu, Giving of.*—The Hindu law, at least as evidenced by usage, though it permits the Asura form of marriage among the mercantile and servile classes, does not prohibit to those classes the more approved forms of marriage. The form of marriage in use among the Nagar Vissa section of the Vania caste corresponds to one or other of the approved forms, and not to the Asura, and the giving of palu does not constitute a purchasing of the bride. **IN THE GOODS OF NATHIBAI. JAISKIONDAS GOPALDAS v. HARKISONDAS HULLOCHANDAS** [**I. L. R., 2 Bom., 9**]

15. ———— **Hindus of Bhandari and other inferior castes.**—Amongst Hindus of the Bhandari and other inferior castes, the Asura form of marriage (probably derived from a form in use amongst the inhabitants of Hindustan before the introduction of the Brahmanical religion) is more customary than the four approved forms of marriage. The principal characteristic of the Asura form is the giving by the bridegroom of *dez*, or a money payment, to the father of the bride. **VIJJARANGAM v. LAKSHUMAN** . . . **8 Bom., O. C., 244**

HINDU LAW—MARRIAGE—continued.**5. VALIDITY OR OTHERWISE OF MARRIAGE—continued.**

16. ———— **Marriage by "gandharp" form.**—*Legitimacy of children.*—Held that a marriage by the "gandharp" form is nothing more or less than concubinage, and has become obsolete as a form of marriage giving the status of wife and making the offspring legitimate. **BHAONI v. MAHARAJ SINGH** . . . **I. L. R., 3 All., 738**

17. ———— **Custom of Tipperah.**—According to the law and custom of marriage prevailing at Tipperah, the Rajah can legitimise his children born of a kachooa by going through a marriage ceremony with the mother. Assuming that no marriage ceremony is necessary to institute a gandharp marriage, mere cohabitation, without any intent and mutual agreement to enter into a binding contract of marriage, is not sufficient. **CHUCKRODHUJ THAKUR v. BEER CHUNDER JOORAJ** . . . **1 W. R., 194**

18. ———— **Marriage between legitimate children of illegitimate parents.**—*Illegitimate children.*—*Sudras.*—According to the Hindu law prevalent in Madras, legitimate children of illegitimate parents of the Sudra caste can contract legal and valid marriages. The marriage between persons of different sections of the Sudra caste is valid and legal. **INDERAN VALUNGYPULY TAYER v. RAMASWAMY PANDIA TAYER** . . . **3 B. L. R., P. C., 1** [**12 W. R., P. C., 41: 13 Moore's I. A., 141**]

Affirming **S. C. in PANDAYA TELAYER v. PULI TELAYER** . . . **1 Mad., 478**

19. ———— **Pat marriage.**—*Marriage among Mahrattas.*—*Inheritance.*—*Sons of twice-married woman.*—The custom of Pat marriage among the Mahrattas, and Natra amongst the inhabitants of Guzerat, referred to, and the authorities bearing on the subject considered and discussed. The sons of a Punarbhu (twice-married woman) by a duly-contracted Pat marriage, *i.e.*, in accordance with the custom of the caste, are legitimate, and, as to the right of inheritance and extent of shares, rank on a par with the sons by *lagna* marriage. **RAHI v. GOVINDA WALAD TEJA** . . . **I. L. R., 1 Bom., 97**

20. ———— **Polygamy.**—*Prohibition against plurality of wives.*—*Semble.*—The prohibition against a plurality of wives, save under certain circumstances, is merely directory and not imperative. **VIRASVAMI CHETTI v. APPASVAMI CHETTI** [**1 Mad., 375**]

21. ———— **Sagai marriage.**—*Custom.*—A man who is a member of the Hulwasee caste may contract a marriage in the sagai form with a widow, even if he has a wife living, provided, in the latter case, that he is a childless man. *Quare.*—Whether a married woman may not contract a sagai marriage, notwithstanding that her husband is living, if the punchayet has examined the case, and reported that her husband is unable to support her. **KALLY CHURN SHAW v. DUKHEE BIBEE** [**I. L. R., 5 Calc., 692: 5 C. L. R., 505**]

HINDU LAW—MARRIAGE—continued.**5. VALIDITY OR OTHERWISE OF MARRIAGE—continued.**

22. — Sagai and Shunga marriages.—Widow re-marriage.—Custom.—A. became a childless widow in the lifetime of her father. She afterwards contracted a Shunga marriage, and by this marriage she had two sons. On the death of her father, A.'s claim to succeed to his property as his heir was disputed. It having been proved that the re-marriage of widows was customary amongst the Nomosudras, the caste to which the parties belonged,—*Held* that such a custom was valid, and that A. was entitled to succeed as heir to her father, under the Hindu law. *HURRY CHURN DASS v. NIMAI CHAND KEYAL*

[I. L. R., 10 Cal., 188: 13 C. L. R., 207]

23. — Re-marriage.—Presumption of legality of marriage.—Act XV of 1856.—L. sued for possession of certain immoveable property as the widow and heiress of a Hindu, a Gaur Rajput, and governed by the law of the Mitakshara, alleging him to have been at the time of his death separate from the other members of his family. The suit was dismissed by the lower Appellate Court, on the grounds that the plaintiff at the time when her connection with the deceased began was the widow of one of his cousins; that, according to the custom of the caste, the marriage of a widow with a relative of her husband was invalid; and that consequently the plaintiff could not be considered the lawfully-married wife of the deceased, and entitled as such to the inheritance of his estate. *Held* that the plaintiff having in the first Court given evidence to show that she was married to the deceased and that her two infant daughters were the offspring of that marriage, and, looking to the provisions of Act XV of 1856, the presumption was in favour of the legality of such marriage until the contrary was shown,—i.e., until the defendants had established that, according to the custom of the caste of Gaur Rajputs, the marriage of a cousin with his deceased cousin's widow was prohibited. *LACHMAN KUAR v. MURDAN SINGH* . I. L. R., 8 All., 143

24. — Re-marriage in husband's lifetime without his consent.—Sompura Brahmins.—Among the Sompura Brahmins a widow, who has re-married in the lifetime of her first husband without his consent, cannot be regarded as the lawful wife of her second husband, but is entitled to maintenance, as his concubine, from his property. *Quere*,—Whether consent of her first husband would have rendered the second marriage valid. *KHEMKOR v. UMIASHANKAR RANCHHOR* . 10 Bom., 361

25. — Lingaits.—Desertion of wife.—According to custom obtaining among the Lingaits of South Canara, the re-marriage of a wife deserted by her husband is valid. *VIRASANGAPPA v. RUDRAPPA* . I. L. R., 8 Mad., 440

26. — Karao marriage.—Jats.—Right of children.—A "Karao" marriage among the Jats is valid, and the offspring of such a union are entitled to inherit. *QUEEN v. BAHADUR SINGH* [4 N. W., 128]

HINDU LAW—MARRIAGE—continued.**5. VALIDITY OR OTHERWISE OF MARRIAGE—continued.****Karao marriage—continued.**

27. — Lodh caste.—Consent of brotherhood.—The custom of "Karao" marriage is prevalent among the Lodh caste, but in the lifetime of a wife by a regular marriage it can only take place with the consent of the brotherhood. *KESHABE v. JAMARDHAN* . 5 N. W., 94

6. LEGITIMACY OF CHILDREN.

28. — Procreation before marriage.—Legitimacy of children.—Under Hindu law, it is not necessary, in order to render a child legitimate, that the procreation as well as the birth should take place after marriage. *GOLOGAPPA CHETTY v. ARBUTHNOT. COLLECTOR OF TRICHINOPOLY v. LEKAMANI. PEDDA AMANI v. ZEMINDAR OF MARUNGAPULI* . 14 B. L. R., 115: 21 W. R., 353 [I. L. R., 1 I. A., 268, 262]

29. — Presumption of legitimacy.—Treatment of child by father as legitimate.—A marriage *de facto* being established and supported by recognition by the deceased zemindar of the children of the marriage as legitimate, the very strongest evidence will be required to show that the law denied to such children their presumable legal status on the ground of their mother's incapacity to contract a marriage. The legal presumption in favour of a child who was born in his father's house of a mother lodged and apparently treated as a wife, who was treated as a legitimate child by his father, and whose legitimacy was disputed after the father's death, was a safe and proper one to be made, and the opposing case had not, as it ought to have been, strictly proved. *RAMAMANI AMMAL v. KULANTHAI NAUOHEAR* . 17 W. R., 1: 14 Moore's I. A., 346

7. RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE.

30. — Injunction to restrain marriage pending suit.—Medical examination.—Impotency.—In a suit against a Hindu who had been outcasted for offering his daughter in marriage to an old and impotent man, the Court granted an injunction to restrain the marriage pending the suit, and held that the lower Courts properly refused to cause the intended husband in this case to be medically examined as to his alleged impotency, he not being a party to the suit, and there being no provision of law authorising such a procedure. *KANANI RAM v. BIDDYA RAM* [I. L. R., 1 All., 549]

31. — Loss of caste, Effect of, on marriage tie.—Caste, Question of.—While the Courts have generally accepted the decisions of properly-constituted punchayets on questions of caste, they have accepted them subject to the qualification that the decision of the punchayet does not estop the Courts from enquiring into the civil rights of any

HINDU LAW—MARRIAGE—continued.**7. RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE—continued.****Loss of caste, Effect of, on marriage tie—continued.**

member of the caste, and securing to him the enjoyment of such rights, if he be found not to be precluded from the enjoyment of them by the shastras or the particular usages of his caste. It would be extremely inconvenient to hold that by a deprivation of caste, which may be temporary, a member of a caste loses his marital rights, so as to confer on his wife the power of contracting a second marriage. It is a general principle of Hindu law that the degradation of the husband from caste does not dissolve the marriage tie. *BISHNESHWAR v. MATAGHOLAM*

[2 N. W., 300]

See, however, *SINAMMAL v. ADMINISTRATOR GENERAL OF MADRAS*. I. L. R., 8 Mad., 169

32. ———— Change of religion.—Divorce.

—*Degradation.*—*Death of husband while outcast.*

—*Dissolution of marriage.*—*Suit by widow to recover husband's estate.*—In 1850 K. married S., both being Brahmins. K. subsequently became a convert to Christianity. In 1881 K. died and S. claimed his estate. Held that, according to Hindu law, K. died an outcast and degraded, and that, as his degradation was unatoned for, the marriage became absolutely dissolved, and no right of inheritance remained to S. *SINAMMAL v. ADMINISTRATOR GENERAL OF MADRAS*

[I. L. R., 8 Mad., 169]

33. ———— Divorce.—Restitution of conjugal rights, Suit for.—Custom.—Where a Hindu husband sued his wife for restitution of conjugal rights, and the defendant pleaded divorce, it was held that, though the Hindu law does not contemplate divorce, still in those districts where it is recognised as an established custom, it would have the force of law. *KUDOMER DOSSEN v. JOTERAM KOLITA*

[I. L. R., 3 Cal., 305]

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See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—MOTHER. [I. L. R., 13 Cal., 336]

1. REQUISITES FOR PARTITION.

1. ———— Necessaries to create partition.—Definition of shares.—Independent enjoyment.—Under the Hindu law two things at least are necessary to constitute partition: the shares must be defined, and there must be distinct and independent enjoyment. *SHRO DIAL TEWARER v. JUDONATH TEWARER*. *SHRO DIAL TEWARER v. BISHONATH TEWARER*. *SHIB DIAL TEWARER v. BISHONATH TEWARER*. *JUDONATH TEWARER v. BISHONATH TEWARER* 9 W. R., 61

2. ———— Evidence of partition.—Partition without actual division.—Under the Mitakshara law there may be a partition in estate without any actual division of the lands into parcels, and allotment of those parcels to the different sharers to be held by them in severalty. *JOSODA KOONWAR v. GOURIE BYJONATH SOHAN SINGH* . . . 6 W. R., 139

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MUKESH DOBBY v. KISHUN DOBBY [1 N. W., Ed. 1873, 42]

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HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

8. ——— *Intention to divide.*—*Partition without division by metes and bounds.*—An actual partition by metes and bounds is not necessary to render a division of undivided property complete. But when the members of an undivided family agree among themselves, with regard to particular property, that it shall henceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and each member thenceforth has in the estate a definite and certain share which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided. *APPOOVIL v. RAMA SUBBA AIYAN*

[8 W. R., P. C., 1: 11 Moore's I. A., 75]

4. ——— *Declaration of intention to divide.*—*Partition without division by metes and bounds.*—*Quære.*—Is a mere signification of intention on the part of a joint Hindu family sufficient to constitute a separation without an actual partition by metes and bounds? *SADABART PRESHAD SAHOO v. LOTF ALI KHAN. PHOOLBAS KOOR v. LALL JUGGESSUR SAHI. BIKRAMJIT LALL v. PHOOLBAS KOOR. RAM DHYAN KOONWAR v. PHOOLBAS KOOR*

14 W. R., 340

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5. ——— *Declaration of intention to divide.*—According to Hindu law, the declaration of an intention to become divided in estate amounts to a valid separation, though not immediately perfected by an actual partition of the estate by metes and bounds. *VATO KOER v. ROWSHUN SINGH*

8 W. R., 82

6. ——— *Intention of parties.*—In ascertaining whether property once joint has become divided and separate, regard must be had to the act and intentions of the co-sharers, but when the character of the property has once been ascertained the law fixes the course of succession. A partition between surviving co-sharers and the widow of a deceased co-sharer may operate as a complete severance of the joint property. *RAM PRESHAD v. CHAINERAM*

1 N. W., 11: Ed. 1873, 10

7. ——— *Arrangement by deed to effect separation.*—An arrangement contained in a deed duly executed by the members of a joint Hindu family, to effect a separation of the property, is sufficient *prima facie* evidence of a valid separation under Hindu law, and in such a case an actual division by metes and bounds is not necessary. *KULPONATH DASS v. MEWAH LALL*

8 W. R., 302

8. ——— *Agreement to divide property.*—*Intention of parties.*—As regards the joint property of a Hindu family, there may be a division of right and interest, which will operate to change the character of the ownership from joint to separate, although it may not be intended at once to

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

perfect it by an actual partition by metes and bounds; and therefore the agreement of a family to divide the proceeds of the joint property among its members in definite shares, with the intention that each should hold his allotted share in severalty, severs the joint interest, and extinguishes the rights springing from united family ownership. *RAMKISSEN SING v. SHEONUNDUN SING*

S. C. in High Court

[9 B. L. R., 310, note: 16 W. R., 142]

9. ——— *Agreement for partition.*—*Mitakshara law.*—*Onus probandi.*—According to the Mitakshara, an agreement for a partition, although not carried out by actual partition of the property, is sufficient to constitute a division of the family, so as to entitle the widow of a deceased brother to succeed to his share of the ancestral property in preference to the surviving brothers. The fact of the family having separate house and field is, according to the Mitakshara, sufficient evidence of partition. The onus of proving re-union is upon the party pleading that there has been a re-union after partition. *SURANENI VENKATA GOPALA NARASIMHA ROY v. SURANENI LAKSHMI VENKAMA ROY*

[8 B. L. R., P. C., 41: 12 W. R., P. C., 40
13 Moore's I. A., 113]

Confirming decision in Court below. *SURANENI LAKSHMI VENKAMA ROY v. SARANENI VENKATA GOPALA NARASIMHA ROY*

3 Mad., 40

10. ——— *Agreement to hold separately.*—To effect a partition of ancestral property there must be, in the absence of division by metes and boundaries, at any rate an agreement that each party interested shall henceforth enjoy the produce of a certain definite share of the joint property. *ASHABAI v. TYEB HAJI RAHMUTULLA*

[I. L. R., 9 Bom., 115]

11. ——— *Unequivocal act or declaration of intention to separate.*—*Suit for declaration of right by one member of joint family.*—Though partition by metes and bounds is not necessary to effect a separation of a joint Hindu family, there must be some unequivocal act or declaration on the part of the family of their intention to be separate. Held that a suit for declaration of his right by one of the members, without stating that he asked for a divided or undivided share, was not a sufficient declaration of such intention. *IN RE PHUL KOERI alias GHINA KOERI*

8 B. L. R., 388, note

S. C. DEBI PRESHAD v. PHUL KOERI alias GHINA KOERI

12 W. R., 510

MUKTAKASI DEBI v. URABATI

[8 B. L. R., 396, note: 14 W. R., 31]

12. ——— *Held on the evidence that there was sufficient evidence that the family had separated.* *IN RE NOWLAKHU KUNWARI*

[8 B. L. R., 399, note]

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

S. C. CHINTAMUN SINGH CHOWDREY v. NOW-LAKHU KUNWARI. 13 W. R., 469

IN RE SAMANDRA KUNWAR

[8 B. L. R., 390, note

S. C. SUMUNDRA KOONWAR v. KALEE CHURN SINGH
[13 W. R., 199

IN RE PURNAMASI DAYI . 8 B. L. R., 395, note

13. ———— *Separate appropriation, holding, and enjoyment.—Mitakshara law.—Minor.—Joint family.*—Where there was a separate appropriation, as well as a separate holding and enjoyment of distinct shares, it was held sufficient to constitute a legal partition under Mitakshara law, following *Appovier v. Rama Subba Aiyar* (11 Moore's I. A., 75). The fact of one of the members of the family being a minor is not sufficient to render the partition invalid, provided the interests of the minor are properly represented as by a manager appointed under section 12, Act XL of 1858. Every member of a joint undivided family has a right to demand a partition of his own share. *DEWANTI KUNWAR v. DWARKANATH* . 8 B. L. R., 363, note
[10 W. R., 273

14. ———— *Mitakshara law.—Deed declaring each member entitled to definite share of property.*—By a deed of sharakatnama the members of a Hindu family, governed by the Mitakshara law, declared that each of the members was entitled to a definite fractional part of the whole estate. Held that this was not sufficient to constitute a valid partition according to the Hindu law. *Appovier v. Rama Subba Aiyar*, 11 Moore's I. A., 75; and *Suraneni Venkata Gopala Narashima Roy v. Suraneni Lakshmi Venkata Roy*, 13 Moore's I. A., 113, distinguished. IN THE MATTER OF THE PETITION OF PHULJHARI KOOR

[8 B. L. R., 385; 17 W. R., 102

15. ———— *Agreement to separate.—Appropriation and recognition of separate holdings.*—To constitute property separate property, it is not necessary that a division should be made by a revenue officer, nor is it necessary that the estate itself should be partitioned in accordance with a private agreement of the co-sharers by metes and bounds. It is sufficient that the co-sharers hold recognised shares, the profits of which shares they severally enjoy and appropriate. *JEONER v. DHURUM KOOR*

[3 N. W., 108

MOHROO KOORER v. GUNSOO KOORER

[8 W. R., 385

MUNSOOROODDEEN v. MAHOMED SUFDAR

[23 W. R., 259

16. ———— *Construction of deed.—Intention of parties.—Alteration of status of parties.*—In all cases of division of joint property, not carried out by a partition by metes and bounds, the question whether the status of the family has been thereby altered is a question of intention of the parties, to be inferred from the instruments which

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

they have executed and the acts which they have done to effect such division. An ikarnama, which did not recite a previous status of undivision, and did not in terms declare that the parties thereto should thenceforth be an undivided family, was construed, nevertheless, to mean that the parties would thenceforth hold and enjoy the property, which was the subject of it, in severalty. *DOORGA PERSHAD v. KUNDUN KOO-WAR* 13 B. L. R., 235; 21 W. R., 214
[L. R., 1 I. A., 55

S. C. in High Court, LALLA MOHABEER PERSHAD v. KUNDUN KOOVAR 8 W. R., 118

17. ———— *Deed of settlement.—Joint carrying on of business.—Separation of interest.*—Where four joint sharers made a deed by which they were entitled to the lands and profits of the kothi in equal fourth shares, and they were each in possession of one-fourth share of the lands, and contributed in those shares to payment of revenue, and the lands stood some in the name of one and some in the names of others of the four sharers, and it was from the deed the clear intention of the parties that each should separately enjoy his one-fourth share which had been carried out,—Held that the deed constituted a partition in interest among them as to their shares, though under the deed they were jointly carrying on the business of the kothi. *JACKSON, J.*, doubting. *Appovier v. Ram Subba Aiyar*, 11 Moore's I. A., 75, followed. *LALLAH MOHABEER PERSHAD v. KUNDUN KOONWAR*

[2 Ind. Jur., N. S., 312

8 W. R., 116

18. ———— *Intention to divide.*—Where a widow sued to recover from the brothers of her deceased husband a share of property which remained undivided at his death, a division of part of the family property having taken place during the lifetime of the husband and she alleged an agreement to divide the rest of the property,—Held that the plaintiff had no right to recover the property which was actually undivided at the death of her husband, an intention to divide without more not being evidence of partition. The doctrine propounded in section 291 of *Stranger's H. L.*, dissented from. *TIMMI REDDY v. ACHAMMA* . 2 Mad., 325

19. ———— *Decision of punchayet as to division.—Evidence of partition.*—In a suit in which the question was whether there had been a division, the sole evidence of division was the decision of a punchayet reciting that division; the question, however, not having been at all material to the point then in dispute,—Held that the decision was not sufficient evidence of the division. *RAMASHESHARAYA PANDAY v. BHAGAVAT PANDAY* 4 Mad., 5

20. ———— *Agreement to hold in defined shares.*—Suit by a widow to recover her husband's share, whom she alleged to be a divided member of a Hindu family, under an agreement to the following effect: "When we lived together, a dis-

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

agreement arising amongst females, we have divided. . . . Thus we shall from this date divide and enjoy the income of the land. When the moiety of lands belonging to our uncle S. in the said three villages shall be equally divided, we shall also share our moiety equally, and obtain separate pottahs. . . . We hold no pecuniary concern." *Held* that when the members of an undivided family agree among themselves with regard to the particular property that it shall thenceforth be the subject of ownership in certain defined shares, each member has thenceforth a definite and certain share in the estate, which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually divided. *Appovier v. Rama Subba Aiyar*, 11 Moore's I. A., 75, followed. *NARAIN AYYAR v. LAKSHMI AKMAL*

[3 Mad., 280]

SUBANENY LAKSHMY VENKAMA ROW v. SUBANENY VENKATA GOPALA NARASIMHA ROW

[3 Mad., 40]

S. C. on appeal to Privy Council

[3 B. L. R., P. C., 41: 12 W. R., P. C., 40
18 Moore's I. A., 118]

LALLA SREE PRESHAD v. AKOONJO KOONWAR

[7 W. R., 488]

SHIB NARAIN BOSE v. RAMNIDHAR BOSE

[9 W. R., 87]

21. ———— Deed of relinquishment effecting partition.—Impartible estate.—Inheritance.—P., an impartible zemindari descendible by inheritance according to the custom of primogeniture, passed, on the death of their father, to V., the eldest of three undivided Hindu brothers. In 1829 V. executed an instrument appointing M., his second brother, to be zemindar of P. This instrument recited that by the death of E., his uncle, without male issue, V. had become entitled to succeed to his estates, unless E.'s widow, then pregnant, should be delivered of a son. The instrument then provided that in the event of the said widow giving birth to a son, V. should retain the zemindari P., but that if she gave birth to a daughter, V. and his offspring should have no interest in the said zemindari, of which M. should be sole zemindar, allowing maintenance to C., the third brother. E.'s widow gave birth to a daughter. V. entered on possession of E.'s estates, and M. took over the zemindari P. C. died without issue. M. died in 1835 and was succeeded by his only son D., who died in 1861, leaving a widow but no sons. In a suit instituted in 1873 by S., a son of V., to recover certain villages belonging to the zemindari P. from defendants in possession and claiming as purchasers for value from D.,—*Held* by the Judicial Committee, reversing the judgments of the Courts below, that the instrument of 1829 was a renunciation by V. for himself and his descendants of all interest in P., either as the head or as a junior member of the joint family, and that its effect was to make P., with its incidents of impartibility and peculiar course of succession, the property of the brothers M. and C., as effectually as if in the case of

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

an ordinary partition between the elder brother on the one hand, and the two younger brothers on the other, a particular property had been assigned to the latter; and that consequently as between D. and the defendants of V., the zemindari was the separate property of the former, whose rights, if he left any undisposed of, passed on his death to his widow, notwithstanding the undivided status of the family, in accordance with the rule of succession affirmed in the *Shivagunga case*, 9 Moore's I. A., 589. *SIVAGNANA TEVAR v. PERIASAMI* . I. L. R., 1 Mad., 312

S. C. PERIASAMI v. PERIASAMI

[I. L. R., 5 I. A., 61]

22. ———— Delineation of shares.—Intended separation.—Separate enjoyment of profits.—Delineation of shares in joint ancestral property recorded as separate estate in the revenue records in pursuance of an alleged intended separation between the members of a joint and undivided Hindu family does not necessarily amount to such separation, which must be shown by the best evidence, viz., separate enjoyment of profits, or an unmistakable intention to separate interests which was carried into effect. *AMBIKA DAT v. SUKHMANY KUAB*

[I. L. R., 1 All., 487]

23. ———— Execution of document intended to operate as a severance.—Power of father to alter status of family.—A partition made by the father is binding on the sons not only in respect of the father's share, but also of their own shares, provided that it is made subject to the restrictions mentioned in the Hindu law. It becomes obligatory by the will of the father as regulated and restrained by the law, irrespective of the consent of the sons. When a father having five sons, three by one wife and two by another, executed in his last illness a document whereby, after retaining a small portion for himself, he directed that the family property should be divided into three-fifths and two-fifths shares, with the manifest intention that from the date of the execution of the document it should operate as a severance (1) of the interest of his sons by one wife from that of his sons by the other, and (2) of the interest of all his sons from his own during his life; but neither the guardian of the infant sons nor the eldest son, who was of age, were parties to the instrument,—*Held* that this was not a will but a partition; that it was competent to the father thus to alter the status of his sons; that the question was whether the transaction was *bona fide* and in conformity with Hindu law and not one of contract, as in the case of a partition between brothers. *KANDASAMI v. DORASAMI AYYAR*

[I. L. R., 2 Mad., 317]

24. ———— Intention as to joint or several ownership.—No right vests in any member of a joint Hindu family to a specific share in the family property, until some act has been done which has the effect of turning the joint ownership into a several ownership. This may be done by

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

signification of intention. It is by such signification of intention taking place, having the effect of making the share of each member both several and defined, that a member of a joint Hindu family is enabled to dispose of his own share by sale whilst the family remains joint. *RAGHUBANFUND DOSS v. SADHU CHURN DOSS*

[I. L. R., 4 Calc., 425; 3 C. L. R., 534

BULAKEN LALL v. INDUREPUTTEN KOWAR

[3 W. R., 41

25. ————— Ascertainment and definition of shares.—Income enjoyed in distinct shares.—In order to show separation in a Hindu family, it is not necessary to establish a partition of the joint estate into separate shares or holdings; it is enough that there has been ascertainment and definition of the extent of right and interest of the several co-sharers in the whole, and of the proportion of participation each of them is to have in the income derived from the property, to effect a severance and destruction of the joint tenancy, so to speak, and to convert it into a tenancy in common. *Appovier v. Rama Subba Aiyar*, 11 Moore's I. A., 76, followed. Held, therefore, where, although the ancestral property of a Hindu family had not been formally and completely partitioned by metes and bounds, the income of it had been enjoyed by the different members of it in distinct and defined shares, that the family was not a joint and undivided Hindu family. *ADI DHO NARAIN SINGH v. DUKHARAN SINGH* I. L. R., 5 All., 532

26. ————— Intention.—Suit for separate share of joint estate.—Although a suit by a member of a joint Hindu family against his co-sharers for a separate share of the joint estate be not in terms a suit for partition, yet, if it appear that the intention of the plaintiff was to obtain the share which he would be entitled to on a separation, and the decree passed in the suit assigns him that share, such decree does in fact effect a partition, at all events, of rights, which, under the doctrine laid down in the case of *Appovier v. Rama Subba Aiyar*, 11 Moore's I. A., 76, is effectual to destroy the joint estate. *JOY NARAIN GIRI v. GIRISH CHUNDER MYTI* I. L. R., 4 Calc., 434: [L. R., 5 I. A., 228

27. ————— Specification and registration of shares under the Land Registration Act, Bengal Act VII of 1876.—B., a Hindu governed by the Mitakshara law, died, leaving two minor sons, J. and K., and also a widow, L., and two minor sons by her, the mother of J. and K. having predeceased him. On J.'s attaining majority, the Court of Wards, which had taken possession of all the property, withdrew from the management, and L. then applied, under Act XL of 1858, and obtained a certificate with respect to the shares of K. and her two minor sons, and the names of the four brothers were recorded under the Land Registration Act with

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

the specification of the shares of each. Held that neither the granting of the certificate to L., nor the registration of the specific shares of each of the co-owners under the provisions of the Land Registration Act, amounted to a partition such as to justify the Court in granting the certificate asked for. *HOOLASH KOER v. KASSEN PROSHAD*. I. L. R., 7 Calc., 369

28. ————— Mitakshara law.

—Separation of joint family how effected.—Agreement for partition, Effect of.—Right of survivorship.—Two brothers, members of a joint Mitakshara family, executed an ikarnama (agreement) whereby, after reciting that the declarants had remained joint and undivided, and in commensality up to a certain date, and that portions of their properties, both moveable and immovable, had been partitioned between them, they provided for the partition of the remaining joint properties by certain arbitrators appointed in that behalf. Held that this agreement of itself amounted to a separation of the brothers as a joint family, and extinguished all rights of survivorship between them. *Shao Doyal Tewares v. Judoosath Tewares*, 9 W. R., 61; and *Babaji Parshram v. Kashibai*, I. L. R., 4 Bom., 157, distinguished. *Ambika Dat v. Sakhamani Kuar*, I. L. R., 1 All., 437, commented upon. *Taj Pratap Singh v. Champa Kaler Koer* I. L. R., 12 Calc., 96

29. ————— Decree effecting partition.—Separate estate.—In a suit brought by the younger of two Hindu brothers against his elder brother for the partition of lands belonging to an ancestral joint estate and against other defendants, claiming as encumbrancers or as absolute owners of portions of the said lands under titles derived from the plaintiff's father and elder brother, for the recovery of the plaintiff's share of the said lands freed from the interests claimed by these defendants, except in so far as such interests might be valid as against the plaintiff under the Hindu law, the Court passed an order to the effect that the property claimed was partible and that the plaintiff was entitled to a moiety, but directed that, with a view to ascertain how far the moiety awarded to the plaintiff was affected by the acts of the plaintiff's father and elder brother, a Commissioner should be appointed to investigate accounts and report thereon to the Court. Before the enquiry thus directed to be made was completed, and before a final decree was passed for the division of the property, the plaintiff died.—Held that the order passed by the Court was tantamount to a declaratory decree determining that there was to be a partition of the estate into moieties, and making the brothers separate in estate from its date, if they had not previously become so; and consequently, that the plaintiff's interest in the property in suit would not pass to the defendant, his elder brother, as joint estate by survivorship, but to his own representatives as separate estate. *Appovier v. Rama Subba Aiyar*, 11 Moore's I. A., 76, referred to and followed. *CHEDAMBARAM CHETTIAR v. GAURI NACHIAR*

[I. L. R., 2 Mad., 63; I. L. R., 6 I. A., 177

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—continued.****Evidence of partition—continued.**

30. ———— *Effect of an unexecuted decree for partition.—Agreement to divide.*—Where there is no indication of an intention to presently appropriate and enjoy in a manner inconsistent with the ordinary state of enjoyment of an undivided family, an agreement to divide without more is not of itself sufficient to effect a partition. Nor is a direction to divide in a decree—which in principle is not distinguishable from a material agreement to divide—more than an inchoate partition insufficient to change the character of the property, which continues a joint estate until there has been an actual partition by metes and bounds, or a division of title so as to give to each member thenceforth a definite and certain share which he may claim the right to receive and enjoy in severalty. **BABAJI PARSHRAM v. KASHIBAI** . I. L. R., 4 Bom., 157

31. ———— *Decree for partition.—Severance.*—A decree for partition does not operate as a severance so long as it remains under appeal. **SAKHARAM MAHADEV v. HARI KRISHNA** [I. L. R., 6 Bom., 118]

2. PROPERTY LIABLE TO PARTITION.

32. ———— *Liability to partition.—Onus probandi.—Prima facie* all property is subject to partition, and the onus of proof is on the party seeking to except any property from the general rule of partition according to Hindu law. **LUXIMON ROW SADASIEW v. MULLAB ROW BAJEE**

[5 W. R., P. C., 67]

33. ———— *Division of compound.—Inconvenience to co-sharers.*—Where one of several joint owners desires to have a division of a compound hitherto held in common, mere inconvenience to the others is not a sufficient obstacle to such division. **RAM PERSHAD NARAIN TEWARIE v. COURT OF WARDS** 21 W. R., 152

34. ———— *Dwelling-house.—Right to partition.*—Partition of a dwelling-house may be claimed as of right by a Hindu. **HULLODHUR MOOKERJEE v. RAMNATH MOOKERJEE**

[Marah., 35: 1 Hay, 71]

35. ———— *Suit by member of family or purchaser.*—A suit for partition of a family dwelling-house may be brought either by one of the members of the family or by a purchaser from such member. **JHUBBOO LALL SAHOO v. KHOOL LALL** 22 W. R., 294

36. ———— *House built on family site by one member at his own expense.—Right of coparceners.*—Where a member of a joint Hindu family built (at his own expense, with borrowed money) a house upon ground belonging to the family, it was held that each of the coparceners was entitled to a share in the house and the site upon which it was built equal in value to his share of the site. **VITHOBA BATAV. HARIBA BAYA** . 6 Bom., A. C., 54

HINDU LAW—PARTITION—continued.**2. PROPERTY LIABLE TO PARTITION****—continued.**

37. ———— *Office of dignity or pattam.*—The pattam, or office of dignity in a family governed by the Aliyasantana law, is indivisible, and whether the family be divided or not, the pattam, no special arrangement having been made about it, descends to the eldest male of the surviving members of the family. The passage set out in a note to the case of **Munda Chetti v. Timmaju Hensu**, 1 Mad., 880, is not a correct interpretation of the original Canarese text of Bhutala Pandiyy's work. **TIMMAFFA HEGGADE v. MAHALINGA HEGGADE** . 4 Mad., 28

38. ———— *Hereditary, secular, and religious office.—Mode of partition of such offices.*—Hereditary offices, whether religious or secular, are no doubt treated by the Hindu text writers as naturally indivisible; but modern custom, whether or not it be strictly in accordance with ancient law, has sanctioned such partition as can be had of such property by means of a performance of the duties of the office and the enjoyment of the emoluments by the different coparceners in rotation. **MANOHARAM v. PRANSHANKAR** I. L. R., 6 Bom., 298

MITTA KUNTH AUDHICAREY v. NERUNJUN AUDHICAREY 14 B. L. R., 166

39. ———— *Inam villages granted by Government.—Ancestral estate.*—Inam villages granted by Government to the grantee and his male heirs for services rendered to the State, are not by the Hindu law in force in the Southern Mahratta country distinguishable from other ancestral real estate and are divisible among the heirs of the grantee. **BODHRAO HUMMONT v. NURSING RAO**

[6 Moore's I. A., 496]

40. ———— *Nuptial gifts to one member of family.—Marriage expenses defrayed out of common funds.*—Nuptial gifts to a member of a joint Hindu family do not, by reason of the marriage expenses having been defrayed out of the common fund, fall into and form part of the common fund so as to be subject to partition. **SHEO GOBIND v. SHAM NARAIN SINGH** 7 N. W., 75

41. ———— *Places of worship and sacrifice.—Division by giving turns of worship.*—Under the Hindu law, places of worship and sacrifice are not divisible. The parties can enjoy their turn of worship, unless they can agree to a joint worship; and any infringement of the right to a turn in the worship can be redressed by a suit. **ANAND MOYEE CHOWDHRAIN v. BOYKANTNATH ROY**

[8 W. R., 193]

42. ———— *Property acquired at charge of patrimony.*—Whatever is acquired at the charge of the patrimony is subject to partition. **JUDONATH TEWARIE v. BISHONATH TEWARIE**. **SHEO DYAL TEWARIE v. JUDONATH TEWARIE**. **SHEO DYAL TEWARIE v. BISHONATH TEWARIE**. **SHIB DYAL TEWARIE v. BISHONATH TEWARIE** . 9 W. R., 61

43. ———— *Property acquired by Hindu while drawing income from his family.—Alteration of mode of investment.*—Property

HINDU LAW—PARTITION—continued.**2. PROPERTY LIABLE TO PARTITION—continued.****Property acquired by Hindu while drawing income from his family—continued.**

acquired by a Hindu while drawing an income from his family is liable to partition, and the quality of the fund cannot be altered by the mode of its investment.

RAMASHESHARAYA PANDAY v. BHAGAVAT PANDAY
[4 Mad., 5

44. ——— Property acquired after agreement to divide.—Private partition, Effect of, as regards subsequently-acquired property.—Where there has been an agreement as to division of property, the Court will hold it to apply to property subsequently acquired accruing from the ancestral estate. **INDERJEET KOOR v. ISMUDEH KOOR**

[1 Ind. Jur., N. S., 141; 10 Moore's L. A., 329
5 W. R., P. C., 14

3. PARTITION OF PORTION OF PROPERTY.

45. ——— Partial partition.—Arrangement between members of family.—It is very doubtful whether, under the Hindu law, any partial partition of the family property can take place except by arrangement. **RADHA CHURN DASS v. KRIPA SINDHU DASS**

[I. L. R., 5 Cal., 474; 4 C. L. R., 428

46. ——— Suit for partition.—Right to sue for partition of portion of property.—A person suing for partition is not obliged to include in his suit the whole of the property, but may confine his suit to the portion of the property which he is desirous of having partitioned; therefore where, in a suit for partition, it was shown that some portion of the property was out of the jurisdiction of the Court, objections that fresh parties would be necessary if the moiety property were included, and that thereupon the suit had not been properly brought, and that the leave of the Court had not been obtained previous to bringing the suit, were overruled. **PADMA-MANI DASI v. JAGADAMBA DASI** . 6 B. L. R., 124

47. ——— Suit for partition of portion of joint property.—A member of an undivided family cannot sue his co-sharers for his share in a single undivided field, portion of the family property. He must sue for a general partition of all the property liable to partition. **NANABHAI VALLABHDAS v. NATHABHAI HARIBHAI**

[7 Bom., A. C., 46

CHYET NARAIN SINGH v. BUNWARI SINGH

[23 W. R., 395

48. ——— Suit for partition of portion of joint property.—Cause of action.—In a suit between brothers who had been in joint possession of property of various kinds and carried on joint business until an alleged recent partition where the plaintiff sought to recover a proportion equal to his share of a sum of money said to have been taken by defendant from the joint funds.—*Held* that unless the plaintiff could show that all the joint property had been divided excepting the sum in ques-

HINDU LAW—PARTITION—continued.**3. PARTITION OF PORTION OF PROPERTY—continued.****Partial partition—continued.**

tion, or that all the property had been divided, and on an adjustment of accounts of past expenses there was a loss equal in amount to that item, he had no cause of action to sue for a moiety thereof. **JUGOO LALL OOPADHYA v. MANOHUR LALL OOPADHYA**

[19 W. R., 43

49. ——— Suit for partition of portion of joint property.—The plaintiffs and the defendants being jointly entitled to and in possession of three khanabaris in a village and other immoveable property, the plaintiff sued for partition of one of the khanabaris only. *Held* that the suit would not lie. **HABIDAS SANYAL v. PRAN NATH SANYAL** . . . I. L. R., 12 Cal., 568

50. ——— Separation of one member of family, Effect of.—The separation of one member of a joint Hindu family does not necessarily create a separation between the other members, nor cause the general disruption of the family. **Radha Churn Dass v. Kripa Sindhu Dass**, I. L. R., 5 Cal., 476, dissented from. **UPENDRA NARAIN MITT v. GOPER NATH BERA**

[I. L. R., 9 Cal., 817; 12 C. L. R., 356

51. ——— Wrongful possession by one co-sharer of portion of joint estate.—Gift by father to one of several sons, co-sharers.—The wrongful possession of a portion of a joint estate, in every portion of which the sharers have equal rights, by one of them is no bar to the partition of the whole, and does not warrant the exclusive assumption of another portion by another of them. Assuming a co-sharer's right in the family estate not to have been lost, a deed of gift of a portion thereof to another co-sharer is a violation of his right not justified by the circumstance that the first co-sharer had wrongfully appropriated some of the joint property in which the others might have recovered their rights by an action-at-law. A co-sharer's hereditary right does not, however, entitle him to claim a partition of a portion only of the ancestral property. **KALKA PRESHAD v. BUDREE SAH** . . . 3 N. W., 267

52. ——— Right to partition of person in occupation of portion of ancestral dwelling-house.—In a suit to obtain by partition half of an ancestral dwelling-house, in which defendant was living, the latter averred that the house in which plaintiff was living was likewise ancestral, and that, in a partition between them the houses which they respectively occupied had fallen to their respective shares. Plaintiff had replied that his house was not ancestral, but had been purchased out of his own funds. *Held* that it was necessary to enquire into plaintiff's title under the whole circumstances of the case, and when it appeared that he was in separate occupation of a portion of the ancestral dwelling-house, whether he had a right to the partition of the one without bringing the other into hotchpot. **RAM LOCHUN PATTUCK v. RUGHOOBUR DYAL**

[15 W. R., 111

HINDU LAW—PARTITION—continued.**3. PARTITION OF PORTION OF PROPERTY**
—continued.**Partial partition—continued.**

53. ———— *Effect of partition of portion of property.—Separate enjoyment.*—Where the members of an undivided Hindu family have divided a portion of the estate, and held their respective shares separately, such shares will be liable to the incidents attaching to separate estates, although the whole of the joint property has not been divided. A partition of joint property is valid as between the members of a Hindu family although it has not been sanctioned by the Board of Revenue, it being shown that for several years after the partition the members of the family had separately enjoyed the shares which fell to them by the partition. *HOOLAS KOONWAR v. MAN SINGH*

[3 Agra, 37]

54. ———— *Partition of share of estate.—Widow.—Possession of estate for maintenance.*—The proprietary right to a share in an undivided estate which includes and carries with it a right to claim and enforce a partition of that share, must be a right of an absolute and unlimited nature, and does not belong to a Hindu widow who has been placed in possession of her deceased husband's share for her maintenance; consequently, where the widow is not an absolute proprietor, but simply an assignee of the profits for a maintenance, she cannot claim partition of the share so assigned. *BHOOP SINGH v. PHOOL KOWER*

2 Agra, Part II, 168

55. ———— *Partition by father and sons.—Partition among joint owners.—Divisibility of portion remaining undivided.*—The doctrine that when, after a partition of a joint family estate, a portion of the estate remains undivided, the portion which remains undivided cannot afterwards be partitioned, refers to a partition made by a father amongst his sons and their co-heirs. It does not refer to the case where a partition has been made by the joint owners amongst themselves. *SHAMASOONDERY DASSEE v. KARTICK CHURN MITTRA*

[Bourke, O. C., 326]

4. RIGHT TO PARTITION.**(a) GENERALLY.**

56. ———— *Right of member of joint family to separate share.*—Members of a joint family residing in joint premises are entitled, on the occurrence of a dispute between them and their co-sharers, to come into Court and ask to have their proper share assigned. The fact of their not having been in possession of a particular portion of the premises is no bar to a claim for such portion. *BIMOLA v. DANGO KANSAREE*

19 W. R., 189

57. ———— *Member of family more than four degrees removed from acquirer.—Remote relatives.*—Partition can effectually be demanded by a Hindu more than four degrees removed from the acquirer or original owner of the property sought to be divided, provided he is not more than

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—continued.****(a) GENERALLY—continued.**

Member of family more than four degrees removed from acquirer—continued.

four degrees removed from the last owner, however remote he may be from the original owner thereof. *Devula's text Avibhakta Vibhaktanaam*, discussed. *MOBO VISBIVANATH v. GANESH VITHAL*

[10 Bom., 441]

58. ———— *Member of family governed by law of Aliyasantana.*—Division of family property cannot be enforced by one of the members of a family governed by the law of Aliyasantana. *MUNDA CHETTI v. TIMMAJU HENSU*

[1 Mad., 380]

(b) DAUGHTER.

59. ———— *Right of daughters to partition.—Mother's property.*—Though daughters succeed to their mother's property, they cannot call for a partition during her life. That is a right peculiar to the son and grandson as joint owners by birth with the father of the ancestral estate. *MATHURA NAIKIN v. ESU NAIKIN*

I. L. R., 4 Bom., 545

(c) GRANDMOTHER.

60. ———— *Right of grandmother to maintenance in competition with mortgagee selling the estate.—Right of residence secured on sale of house by mortgagee.*—Although, according to the Mitakshara, a grandmother may, on partition, or if the estate is being wasted or her maintenance is not duly provided for, claim an assignment of a portion of the estate, yet she cannot call for partition, and her right to maintenance cannot affect a mortgage of the estate created before any portion has been assigned to her, except that, if the house she resides in is subject to the mortgage and is sold in execution of a decree upon the mortgage, the house must be sold subject to her right. *VENKATAMMAL v. ANDYAPPA CHETTI*

I. L. R., 6 Mad., 130

(d) GRANDSON.

61. ———— *Right of grandson to sue for partition.—Ancestral family property.*—A grandson may, by Hindu law, irrespective of all circumstances, maintain a suit against his grandfather for compulsory division of an ancestral family property. *NAGALINGA MUDALI v. SUBBIRAMANYA MUDALI*

1 Mad., 77

62. ———— *Interest in ancestral property.*—In a joint Hindu family governed by the Mitakshara law, a grandson has by birth a vested interest in ancestral property, which entitles him to enforce partition in the lifetime of his father and grandfather. *Deendyal Lal v. Jugdeep Narain Singh*, I. L. R., 3 Cal., 198; *Laljeet Singh v. Rajcoomar Singh*, 12 B. L. R., 573; and *Nagalinga Mudali v. Subbiramanya Mudali*, 1 Mad., 77. *JOGUL KISHORE v. SHIB SAAHAI*

[I. L. R., 5 All., 430]

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—continued.****(e) MINOR.**

63. ——— Suit by or on behalf of minor for partition.—*Mithila school of law.—Suit by mother and minor children for partition.—Malversation.*—A suit cannot be brought by or on behalf of a minor to enforce partition unless on the ground of malversation, or some other circumstances which make it for his interest that his share should be set aside and secured for him. *DAMOODUR MISSEER v. SENABUTTY MISRAIN*

[I. L. R., 8 Calc., 587: 10 C. L. R., 401

(f) PURCHASER FROM WIDOW.

64. ——— Right of purchaser to sue for partition.—*Assignee of widow.*—A Hindu widow being competent under the Hindu law to put in a claim to enforce partition as against her co-sharers, there is nothing to prevent a purchaser of her estate at a sale in execution of a decree from enforcing a like claim. *RUGHONATH PANJAH v. LUCKHUN CHUNDER DULLAL CHOWDERY*

[18 W. R., 23

65. ——— *Bengal school of Hindu law.—Widow's estate.—Joint widows.*—Where a Hindu governed by the Bengal school of Hindu law dies intestate, leaving two widows his only heirs him surviving, either of those widows may sell her interest in her deceased husband's property, and the purchaser thereof is entitled to enforce a partition as against the other widow. The partition, if decreed, should be effected in such a way as would not be detrimental to the future interests of the reversioners. *JANOKINATH MUKHOPADHYA v. MOTHEURANATH MUKHOPADHYA*

[I. L. R., 9 Calc., 580: 12 C. L. R., 215

66. ——— *Alienation by Hindu widow of share in family dwelling-house.*—An assignee of a Hindu widow, though a stranger to the family, is in the same position as the Hindu widow, and is entitled to sue for partition of the joint family dwelling-house, and all that the Court has to see to is that the partition should be carried out in such a way as not to affect the rights of the reversioners. *BEPIN BEHARI MODUCK v. LAL MOHUN CHATTOPADHYA*

I. L. R., 12 Calc., 209

(g) SON.

67. ——— Suit by son to enforce partition against father.—*Mitakshara law.—Undivided Hindu family.—Ancestral immoveable property.*—In an undivided Hindu family the son has, under the Mitakshara, a right to demand in the lifetime, and against the will, of his father, the partition and possession of his share in the ancestral immoveable property of the family. *KALI PARSHAD v. RAM CHARAN*

I. L. R., 1 All., 159

68. ——— *Right to property not acquired by birth.*—In a suit brought by a son against his father to compel a division of move-

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—continued.****(g) SON—continued.**

Suit by son to enforce partition against father—continued.

able and immoveable property inherited by the latter from his paternal cousin.—*Held* that as regards the jewels of which plaintiff required an account the plaintiff had no right of complaint, although his father, the defendant, had made an unjust and partial distribution of them. *Held* also that the suit to enforce a division of the immoveable property could not be maintained, inasmuch as neither the plaintiff nor the defendant acquired any right of such property by birth. *RAYADUR NALLATAMBI CHETTI v. RAYADUR MAKUNDA CHETTI*

3 Mad., 455

69. ——— *Moveable ancestral property.—Ancestral business.*—On the Bombay side of India a Hindu son has no right to enforce partition of ancestral moveable property in the hands of his father, or to claim a separate share in an ancestral business against his father's will, although the son alleges that his father is prejudiced against him and intends to deprive him of his succession to such property and business. *Seemle*.—That a son cannot enforce partition of immoveable ancestral property under similar circumstances. *RAMCHANDRA DADA NAIK v. DADA MAHADEV NAIK*

[1 Bom. Ap., 76

70. ——— *Right of a son to claim partition of moveable as well as immoveable property in his father's lifetime.—Son's right to partition of property comes to the possession of his father before the son's birth.—Property acquired by litigation.—Self-acquired property devised by a father to his son is taken by the son under the will and is self-acquired in his hands.—Earnings of father as mill manager.—Property left by testator to be held moveable or immoveable according to its condition at testator's death.—Kapoli Bania caste, Custom of, as to partition.—PER APPEAL COURT.*—There is no distinction between moveable and immoveable property as regards the right of a son in an undivided family governed by the Mitakshara law to partition in the lifetime of the father. *PER SCOTT, J.*—Where the law of the Mayukhs applies, a son is entitled to demand partition of moveable as well as immoveable property in his father's lifetime. Defendant's great-grandfather (*M.*) died in 1792, leaving a will, dated 1789, whereby he directed his property to be equally divided among his five sons, of whom *R.* (the grandfather of defendant) was one. The property became the subject of litigation, and was not divided until 1852, long after the death of *R.*, which took place in 1808. *R.*'s share was received in 1852, by the executors of his son, *N.* (defendant's father), who had died in 1843. *Held* that this property came to the defendant by inheritance, and was ancestral property, and was not capable of being given or willed away by him. Further, that, as having regard to *M.*'s will, there was no apparent intention on the part of the testator to convert into money such of his property as consisted of lands and houses,

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—continued.****(g) SON—continued.****Suit by son to enforce partition against father—continued.**

the general rule of law applied, *viz.*, that the property must be held to be real or personal according to the actual condition in which it existed at the testator's death. *Held*, also, that the defendant's son had a right to claim partition of this property, although the defendant had no son born to him at the time. (1852) he came into possession of it. All property acquired out of the income of ancestral property is itself ancestral, whether acquired before or after the birth of a son. In order to entitle a coparcener to hold, as property self-acquired by him, property, which has been recovered by his exertions (*e.g.*, by litigation), such property must have been recovered from usurpers holding it adversely to the family; the coparceners must have abandoned their rights; and where such abandonment is a matter of inference, the coparceners, to whom it has been imputed, must have been in a position to sue. A son to whom his father leaves his self-acquired property by will takes the property under the will, and not by inheritance; and as property received by will is held by Hindu law to be received by gift, such property is self-acquired in the hands of the son, and is not subject to partition. The first defendant was sued by his son for partition. Some of the property in the defendant's hands consisted of his earnings as manager of a mill and of the investments of such earnings. The mill had been established in 1860, and the defendant bought thirty-nine shares out of the ancestral funds in his hands. He was appointed chairman of the company, and managed the mill for ten years without any remuneration. His management was very successful, and good dividends were declared every year from 1863. In 1870 he declined to work any longer without remuneration, and at a meeting of the shareholders he was appointed managing director, and was granted a commission on all sales effected by the company. *Held* that the commission so received by the defendant was his self-acquired property. Under the circumstances it might safely be inferred that he did not obtain the appointment of manager by the direct influence of the shares which he held in the company. The gratuitous services which he had for years rendered to the shareholders had influenced them in giving him the appointment, and such influence could not be said to have been created by the direct instrumentality of the ancestral property. In a suit for partition brought by a son against his father, *Held* that the plaintiff was entitled to partition of the ancestral property as it subsisted at the date of the suit. A custom alleged to exist among the Kapoli Bania caste, according to which a son is not entitled to the partition of ancestral property in his father's lifetime and against his father's will, held not proved. **JAGMOHANDAS MANGALDAS v. MANGALDAS NATHUBHOY** . . . I. L. R., 10 Bom., 523

71. ——— Son, Partition by.—Right of sons as against mortgagees of ancestral property.—In a suit by four sons, members of a joint family, for

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—continued.****(g) SON—continued.****Son, Partition by—continued.**

determination of right and partition of family property which had been mortgaged by their father as security for a loan and had been sold in execution of a decree, the father being still alive, as well as his second wife, who was not incapacitated by age from bearing children, *Held* that the mortgagee could not stand in a better position than the father against whom the sons had a right to require partition of the property so far as it was ancestral. **LOOHUN SINGH v. NEMDHAREE SINGH** . . . 20 W. R., 170

72. ——— Right of sons to partition.—Indebtedness of father.—Minor sons.—Under Mitakshara law, minor sons have rights in ancestral property, for a declaration of which by partition their mother can proceed against their father and his creditors. Partition in such a case might be ordered against the will of the father, without actually taking the property out of his hands. Even where sons, because of their minority, are incapable of signifying their intention of enforcing partition, it is open to a Court to discover whether there are special circumstances which would make a partition desirable. **LEXHRAJ KOOR v. SIRDAR DYAL SINGH** [25 W. R., 497]

(h) SON-IN-LAW OF LUNATIC.

73. ——— Partition of lunatic's estate.—Joint property in Mitakshara family.—The husband of a lunatic's daughter applied to the Court to declare his father-in-law, who was a member of a joint Mitakshara family, to be a lunatic, and appoint a manager of his property and a guardian of his person under Act XXXV of 1858. The Court found that the application was made with a view to taking consequent proceedings for partition. *Quare*,—Assuming the application to be made with a view to a partition of the property, and that the lunatic was declared a lunatic under the Act, whether a partition could be had. **IN THE MATTER OF THE PETITION OF BHOOPENDRA NARAIN ROY. BHOOPENDRA NARAIN ROY v. GREESE NARAIN ROY** . I. L. R., 6 Calc., 539 [S. C. L. R., 30]

(i) WIDOW.

74. ——— Widow, Partition by.—Ground for exclusion from right.—Likelihood of re-marriage.—There is no ground for the exclusion of a Hindu widow from a claim to partition, for, as the law now stands, she may re-marry and have issue. **BIMOLA v. DANGOO KANSABEE** . . . 19 W. R., 189

75. ——— Power of widow to enforce partition.—It is competent to the childless widow of a Hindu dying without other nearer heirs to enforce the actual division of the family property in which her husband at his death was entitled to share, when the separation of her husband has taken place and his share been ascertained, though not actually set apart in specie. **RAM JOSHI v. LAKSHMIBHAI** [1 Bom., 189]

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—continued.****(i) WIDOW—continued.****Widow, Partition by—continued.**

76. ——— Discretion of Court.—*Widow with daughters and grandsons.*—The question whether a Hindu widow is entitled to partition is one for the discretion of the Court in each particular case. In this case, where the plaintiff had daughters and grandsons, and the share she was entitled to through her husband was considerable, she was held entitled to a decree for partition. **SOUDAMINY DOSSETT v. JOGESH CHUNDER DUTT**

[I. L. R., 2 Cal., 262]

77. ——— Settlement by coparcener on wife.—*Purchaser for value.*—In pursuance of an ante-nuptial agreement made in consideration of marriage with the father of A., his intended wife, A. N., an undivided member of a Hindu family, executed a post-nuptial settlement in favour of A., whereby he declared that during his lifetime his share in the joint family property should be enjoyed by husband and wife jointly, and after his death his share should belong to A. On the death of A. N., A. sued his coparcener to recover by partition the share of A. N. in the joint family property. *Held* that A. was entitled to recover. **ALAMELU v. RANGASAMI**

[I. L. R., 7 Mad., 588]

78. ——— Right of widows to partition, or to separate enjoyment of joint property.—A claim by one of several widows to an absolute partition of the joint estate, giving to each a share in severalty, is not maintainable. A case may be made out entitling one of several widows to the relief of separate possession of a portion of the inheritance. Such relief ought to be granted when, from the nature or situation of the property and the conduct of co-widows or co-widow, it appears to be the only proper and effectual mode of securing the enjoyment of her distinct right to an equal share of the benefits of the estate. Upon the death of the late Raja of Tanjore, the Government of Madras, in the exercise of their sovereign power, took possession of the estate and private property of the Raja. Subsequently, the Government made over to the widows and daughter of the Raja the landed and personal property, having previously obtained the opinion of the Hindu law officers of the Sudder Court on a question put with the view of ascertaining the Hindu law as applicable to the case. The order of Government contained the following direction: "The estate will therefore be made over to the senior widow, who will have the management and control of the property, and it will be her duty to provide in a suitable manner for the participative enjoyment of the estate in question by the other widows, her co-heirs. On the death of the last surviving widow, the daughter of the late Raja, or failing her the next heirs of the late Raja, if any, will inherit the property." In a suit by two of the widows against the senior widow, and the 14th defendant, the alleged adopted son of the late Raja, for a division of the moveable property which had been made over to the

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—continued.****(i) WIDOW—continued.****Widow, Partition by—continued.**

senior widow by the Government of Madras, and for the cancellation of the adoption of the 14th defendant,—*Held* that the claim of the 14th defendant by right of adoption being as lineal heir to the Raja in preference to the widows, would not be maintainable, assuming the adoption to have been valid. To that claim the absolute ownership of the Government in the interval from the death of the Raja until the act of State by which the transfer was made to the widows and daughters is fatal. **JIOY-IAMBA BAYI SAIBA v. KAMAKSHI BAYI SAIBA. BAYI SAIBA v. JIOYIAMBA BAYI SAIBA**

[3 Mad., 424]

79. ——— Co-widows.—*Widows inheriting jointly.*—*Order for separate possession and enjoyment.*—Widows who take a joint interest in the inheritance of their husband have no right to enforce an absolute partition of the estate between themselves. But where, from the conduct of one or more of their number, separate possession of a portion of the inheritance is the only likely means to secure for each peaceful enjoyment of an equal share of the benefits of the estate, an order for separate possession and enjoyment may be made. **Jioyimba Bayi Saiba v. Kamakshi Bayi Saiba, 3 Mad., 424**, referred to and approved. **GAJAPATHI NILAMANI v. GAJAPATHI RADHAMANI**

[I. L. R., 1 Mad., 280; 1 C. L. R., 97
L. R., 4 I. A., 212]

80. ——— Co-widows.—*Arrangement for separate enjoyment.*—Although the two widows of one and the same husband may arrange for the enjoyment of the estate in separate portions, there can be no compulsory partition converting the joint estate into an estate in severalty. The interest of one of two such co-widows cannot be sold. **KETHAPPEUMAL v. VENKABAI**

[I. L. R., 2 Mad., 194]

81. ——— Co-heiresses.—*Suit to enforce partition.*—Two widows, co-heiresses, in joint possession of property by the Hindu law are in the nature of coparceners, and one of them can enforce partition against the other notwithstanding the limited character of their tenure, and although such partition is not binding on the reversioners. **PADMAMANI DASI v. JAGADAMBA DASI**

[6 B. L. R., 134]

(j) WIFE.

82. ——— Right of wife to demand partition.—*Share of, on partition.*—Although when a partition does take place, a wife in a Mitakshara joint family is entitled to a share, she has no right herself to take the initiative and demand a partition. **SUNDER BAHU v. MONOHUR LALL UPADHYA**

10 C. L. R., 70

HINDU LAW—PARTITION—continued.**5. SHARES ON PARTITION.****(a) GENERAL MODE OF DIVISION.**

83. — Mode of division.—Survivorship until partition.—Rule for partition.—In joint families governed by the Mitakshara law, the principle of survivorship is in force until partition, and upon partition distribution amongst the different members of the family should be made, not according to the ordinary Hindu rule of heirship, but *per stirpes*. **RAJNARAIN SINGH v. HEERALLAL** [I. L. R., 5 Cal., 142]

84. — Method of ascertaining shares when some of the family remain united after a partial partition.—A Hindu died, leaving two sons, *A.* and *B.* *A.* had one son, *C.*, and *B.* had three sons, *D.*, *E.*, *F.* *C.* had three sons, *D.*, one, *E.* two, and *F.* one. In 1867 two of *C.*'s sons, the two sons of *E.*, and the son of *F.* brought a suit to obtain their shares of the family property. For the purpose of that suit the property was divided into twelve shares. Of the six shares due to *A.*'s branch three were allotted to the two sons of *C.* Of the six shares due to *B.*'s branch two were allotted to the sons of *E.* and two to the son of *F.* The remaining five shares were enjoyed in common by the rest of the family, *C.*, his third son, and the son of *D.*, who remained in union. In 1872 *C.* died. In 1879 the third son of *C.* sued the son of *D.* to recover his share of the family property, claiming three fifths of the whole. The Subordinate Judge awarded him a moiety, on the ground that the present state of the family alone was to be considered in ascertaining the shares. *Held* that the plaintiff was entitled to the amount claimed by him. The rule that as between different branches division should be *per stirpes*, and as between sons of the same father *per capita*, applies to cases in which all the coparceners desire partition at the same time, and not to cases of partial partition. Where a joint family in an advanced state of development is broken up by partition, regard must be had to the successive vested interests of each branch, and in order to secure equality of shares division *per stirpes* at each stage when a new branch intervenes is necessary. **MANJANATHA v. NARAYANA** . I. L. R., 5 Mad., 363

(b) ADOPTED SON.

85. — Share of adopted son.—Son born after adoption of son.—The share of an adopted son where sons are afterwards born is one fourth of the share of a son born to the adoptive father after the adoption. **AYYAYU MUPPANA v. NILADATCHI AMMAL** . . . 1 Mad., 45

86. — Share of an adopted son of a natural son on partition in a Mitakshara family.—Intention as to joint or several ownership.—On partition in a Mitakshara family, an adopted son and the adopted son of a natural son stand exactly in the same position, and each takes only the share proper of an adopted son, —i.e., half of the share which he would have taken

HINDU LAW—PARTITION—continued.**5. SHARES ON PARTITION—continued.****(b) ADOPTED SON—continued.****Share of adopted son—continued.**

had he been a natural son. The fact that such an adopted son, a member of a Mitakshara family, becomes upon adoption a joint owner of the family property, will not prevent the operation of the rule. **RAGHUBARUND DOSS v. SADHU CHURN DOSS** [I. L. R., 4 Cal., 426; 3 C. L. R., 584]

87. — Sudras.—Suit for partition by adopted son.—Assuming that, according to the Mitakshara, the share of an adopted son on partition is limited to one half of the share which he would have taken had he been a natural son, this rule does not apply to Sudras, amongst whom the adopted son is declared to be entitled to an equal share with a legitimate son born after the adoption. **Raghubharund Doss v. Sadhu Churn Doss**, I. L. R., 4 Cal., 426, doubted. **RAJA v. SUBBARAYA** . . . I. L. R., 7 Mad., 253

(c) DAUGHTER.

88. — Share of daughter.—Expenses for marriage of unmarried daughters.—Property sufficient to defray the expenses of the nuptials should be given to unmarried daughters, on a partition. **DAMOODUR MISSEER v. SENABUTTY MISERAIN** . I. L. R., 8 Cal., 537; 10 C. L. R., 401

(d) GRANDMOTHER.

89. — Share of grandmother.—Right to maintenance until partition.—According to the Mitakshara, the mother, or the grandmother, is entitled to a share when sons or grandsons divide the family estate between themselves; but she cannot be recognised as the owner of such share until the division is actually made; she has no pre-existing right in the estate, except a right of maintenance. **JUDDOONATH TEWARNE v. BISHONATH TEWARNE**. **SHEO DYAL TEWARNE v. JUDDOONATH TEWARNE**. **SHEO DYAL TEWARNE v. BISHONATH TEWARNE**. **SHIB DYAL TEWARNE v. BISHONATH TEWARNE** 9 W. R., 61

90. — A grandmother held not entitled to a share of the joint family property on partition. **RADHA KISHEN MAN v. BACHAMAN** I. L. R., 8 All., 118

PUDDUM MOOKHEE DOSSEH v. RAYE MONEE DOSSEH 12 W. R., 409

Upheld on review in **RAYE MONEE DOSSEH v. PUDDUM MOOKHEE DOSSEH** . . . 13 W. R., 63

91. — Self-acquired property of father on partition.—Under the Mitakshara law, a grandmother, on partition, is entitled to a share in the joint family property. *Semble*.—The rule of law to be found in the 2nd vol. of Vyavastha Chandrika, pp. 356-359, which lays down that, when the father makes the partition of his own choice, his mother is not entitled to a share, is intended to apply

HINDU LAW—PARTITION—continued.**5. SHARES ON PARTITION—continued.****(d) GRANDMOTHER—continued.****Share of grandmother—continued.**

only to the self-acquired property of the father.

BADRI ROY v. BHUGWAT NARAIN DOBRY

[I. L. R., 8 Calc., 649: 11 C. L. R., 186]

92. ————— Grandchildren.

—Right of grandmother to share.—In a suit for partition among the members of a joint Hindu family, consisting of the heirs, in different degrees, of five brothers, a decree for partition according to certain proportions was made, subject, so far as the decree affected property derived through the eldest brother, to maintenance for his widow, *A*. Among other parties to the suit were *B*., the granddaughter by the eldest son of *A*., and *C*., her second son. *C* died in 1880, leaving a widow, *D*., and four infant sons. *A*., who was not a party to the partition suit, now sued *B* and *D* and the infant sons of *C* for a declaration that she, as such widow and mother, was entitled to a share in the partitioned properties equal to those of her granddaughter, *B*., and her grandsons, the infant sons of *C*. Held that such a suit would lie, it not being a suit for partition exclusively among grandsons, and that *A* was entitled to an equal share with her granddaughter and grandsons in the properties which under the partition decree had been allotted to the representatives of her husband, and to alife interest in the income of the property remaining unpartitioned. **SIBBOOSONDERY DABIA v. BUSOOMUTTY DABIA** . . . I. L. R., 7 Calc., 191

(e) MEMBER ACQUIRING FRESH PROPERTY.

93. ————— Share of member increasing joint estate.—Double share.—Whatever is acquired at the charge of the patrimony is subject to partition; but if the common stock is improved an equal share is ordained. Where a coparcener, with comparatively small detriment to the joint estate, acquires any separate property by his own labour or capital, the property is nevertheless to be considered joint, although the acquirer gets a double share. **JUDONATH TEWARRE v. BISHONATH TEWARRE. SHEO DYAL TEWARRE v. JUDONATH TEWARRE. SHEO DYAL TEWARRE v. BISHONATH TEWARRE. SHIB DYAL TEWARRE v. BISHONATH TEWARRE** . . . [9 W. R., 61]

94. ————— Property acquired by exertion of particular members.—Double share.—Where, with small aid from paternal property, separate and distinct properties are acquired principally through the exertions of particular members of a joint Hindu family, such members are entitled to a double share upon separation. **SREN NARAIN BERAH v. GOORO PERSAUD BERAH** . . . 6 W. R., 219

95. ————— Share of increment to estate.—Where one of the members of a joint undivided family purchases for the benefit of, and with funds belonging to, the family, he is entitled to such a share of the property covered by that purchase as is equal to his original share in the cor-

HINDU LAW—PARTITION—continued.**5. SHARES ON PARTITION—continued.****(e) MEMBER ACQUIRING FRESH PROPERTY—continued.****Share of member increasing joint estate—continued.**

pus of the estate, on the principle that the increment must follow the same rule as the corpus. **KALEE SUNKUR BHADOOREE v. ESHAN CHUNDER BHADOOREE** . . . 17 W. R., 529

96. ————— Recovery of property by one member at his own expense and labour.

—The Court declined to extend to all the remote branches of a Hindu family separate in mess and estate, and having no common interest like those of brothers, the doctrine laid down in a solitary case in which an elder brother, who recovered certain property by his own money and labour, was awarded two thirds of the property, and the younger brother obtained only one third. **BISHESWAR CHAKRAVARTI v. SHITUL CHUNDRA CHAKRAVARTI** . . . 8 W. R., 13

(f) MOTHER.

97. ————— Share of mother.—Ancestral property.—Mitakshara law.—Share of mother on partition between father and sons.—Upon a partition of ancestral property between a father and his sons during the lifetime of the father, the mother is, under the Mitakshara law, entitled to a share. **MAHABEE PERSAD v. RAMYAD SINGH** [12 B. L. R., 90: 20 W. R., 192]

98. ————— Partition in father's lifetime.—Mitakshara law.—By the Mitakshara law a son may sue during the lifetime of his father for a partition of the ancestral property. On such a partition being made, the mother is entitled to have a share allotted to her, by way of maintenance or otherwise, equal to a son's share. **LALJEET SINGH v. RAJCOOMAR SINGH** . . . 12 B. L. R., 373 [20 W. R., 337]

99. ————— Share of step-mother.—Partition between sons.—According to the leading authorities of the Mitakshara school, both mother and stepmother are equal sharers with the sons. **DAMOODUR MISSE v. SENABUTTY MISSE** [I. L. R., 8 Calc., 537: 10 C. L. R., 401]

100. ————— Partition among sons.—Deceased son.—On a partition among her sons, a mother is entitled to obtain a share as representative of a deceased son, as well as one in her own right. **JUGOMOHAN HALDAR v. SARODAMAYEE DOSSEN** . . . I. L. R., 3 Calc., 149

101. ————— Half-brothers and mother.—Mother's share.—Where there is a partition after the father's death between several brothers, some of whom are by one wife, some by another, and either wife survives at the time of partition, the property should be first divided between all the brothers, and the widow takes an equal share with her own sons of the whole portion allotted to them. Following the decisions quoted by Sir F.

HINDU LAW—PARTITION—continued.**5. SHARES ON PARTITION—continued.****(f) MOTHER—continued.****Share of mother—continued.**

Macnaughten, in his "Considerations of Hindu Law," but doubting their propriety. *CALLY CHURN MULLICK v. JANAVA DASSEN*. 1 Ind. Jur., N. S., 284

102.**Partition by sons.**

Share of son.—On partition of the family property by the sons after their father's death, the mother is entitled to share equal to that of a son. If she has before the partition received property from the father either by gift or will, amounting to more than a son's share, she is entitled to nothing more on partition: if she has received less, she is entitled on partition to as much as will make what she has received equal to a son's share. *JODOONATH DEY SIRCAR v. BROJONATH DEY SIRCAR*

[12 B. L. R., 385]

103.**Partition after death of father.**

Sons of different wives.—On a partition after the father's death between brothers, the sons of different wives who are alive at the time of the partition, such wives are entitled to share with their sons. *TORIT BHOOSUN BONNERJEE v. TARAFROSONNO BONNERJEE*

[I. L. R., 4 Calc., 756; 4 C. L. R., 161]

104.**Share of widow**

mother on partition in ancestral and proceeds of ancestral property.—A Hindu mother on partition is entitled to a share equal to that of a son both in the ancestral property of her husband and in all property acquired with the proceeds of such ancestral property. *Sudanand Mohapatra v. Soorjoomones Dayee*, 11 W. R., 436, dissented from. *ISREN PERSHAD SINGH v. NASIB KOOR*

[I. L. R., 10 Calc., 1017]

105.**Partition by sons.**

Widow's share.—*Will, Construction of.*—On partition of the joint family property by the sons after their father's death, the widow is entitled to get a share equal to that of each of the sons, and, if she has received any property either by gift or legacy from the father, she is entitled to so much only as with what she has already received would make her share equal to that of each of the sons. *Jadoonath Dey Sircar v. Brojonath Dey Sircar*, 12 B. L. R., 385, followed. Where a Hindu by his will, after bequeathing a legacy to his widow of Rs. 1,000 and appointing her executrix along with other executors, directed that his executors should divide the estate amongst his sons in accordance with the shastras after his youngest son had attained majority,—*Held* that such direction did not amount to an absolute bequest to his sons so as to exclude the widow from being entitled to a share upon a partition between the sons. *KISHORI MOHUN GHOSH v. MONI MOHUN GHOSH*

I. L. R., 12 Calc., 165

(g) WIDOW.**106.**

Share of widow.—*Son of husband's half-brother.*—*Widow of husband's*

HINDU LAW—PARTITION—continued.**5. SHARES ON PARTITION—continued.****(g) WIDOW—continued.****Share of widow—continued.**

father.—The plaintiff, the widow and heiress of one N., brought a suit for partition of the estate of one R. (her late husband's father) against A., a son of her late husband's half-brother, and K., the widow of R., the parties to the suit being the only members of the family then alive. *Held* that A. took a one-half share in the estate, the other half share being divisible between the widow of R. and the widow of N. *Cally Churn Mullick v. Janava Dossen*, 1 Ind. Jur., N. S., 284, followed. *KRISTO BHABINNY DOSSEN v. ASHUTOSH BOSU MULLICK*

[I. L. R., 13 Calc., 39]

107.**Mitakshara law.**

Joint undivided property.—A Hindu widow, entitled by the Mitakshara law to a proportionate share with sons upon partition of the family estate, can claim such share, not only *quoad* the sons, but as against an auction-purchaser at the sale in the execution of a decree of the right, title, and interest of one of the sons in such estate before voluntary partition. *BILASO v. DINA NATH*

[I. L. R., 3 All., 88]

108.**Widow of deceased brother.**

—Where there has been a general partition, but some of the property remains joint, the widow of a deceased brother will not participate in the undivided residue. *BADAMOO KOOWAR v. WUZEEB SINGH*

[1 Ind. Jur., N. S., 144; 5 W. R., 78]

(h) WIFE.**109.****Share of wife.**

Mitakshara law.—*Distribution by mortgages and sales in execution.*—By verses 1 and 2 of section 7 of Chapter I of the Mitakshara, when a distribution of ancestral property is made during the lifetime of a father of a family subject to Mitakshara law, his wife is entitled to an equal share with her husband and her sons. *Held*, in this case, that the mortgages by A. and the sales in execution which occurred during his lifetime must, as against the defendants, be taken to be a distribution within the meaning of those verses; and as possession was taken by the defendants during A.'s lifetime, it must be considered a distribution made within that period, and therefore the widow was entitled to an equal share with her two sons. *PURSID NARAIN SING v. HONOOMAN SING*

[I. L. R., 5 Calc., 845; 5 C. L. R., 576]

BULDEO SINGH v. MAHABEER SINGH

[1 Agra, 155]

110.**Mitakshara law.**

Ancestral property.—Under the Mitakshara law, where partition of ancestral property takes place between a father and a son, the wife of the father is entitled to a share. *Mahabeer Persad v. Ramyad Singh*, 12 B. L. R., 90; *Laljeet Singh v. Rajcoomar Singh*, 12 B. L. R., 373; *Jadoonath Dey Sircar v. Brojonath Dey Sircar*, 12 B. L. R., 395;

HINDU LAW—PARTITION—continued.**5. SHARES ON PARTITION—continued.****(A) WIFE—continued.****Share of wife—continued.**

and *Pursid Narain Singh v. Honooman Sakay, I. L. R., 5 Calc., 845*, followed. *SUMRUN THAKUR v. CHUNDERMUN MISSEER*. I. L. R., 8 Calc., 17 [9 C. L. R., 415]

SUNDUR BANU v. MONOHUR LALL UPADHYA [10 C. L. R., 79]

6. RIGHT TO ACCOUNT ON PARTITION.

111. ——— Right to account of past transactions.—*Share in outstanding debts.*—*Interest.*—A plaintiff entitled on partition to half the property in the hands of his brother is bound to bring into hotch-pot any ancestral property, or property acquired from ancestral funds which may be in his own hands, but is not liable to account for money received by him from his father while living in commensality with him and his brother, the circumstances of such receipt not being of a kind to impute fraud. Members of an undivided Hindu family making partition are entitled, as a rule, not to an account of past transactions, but to a division of the family property actually existing at the date of partition. In a partition suit, the Court ought not to order an immediate money payment by the defendant to the plaintiff of his share in the outstanding debts due to the family estate, as if such outstanding debts had been recovered and the money were in the hands of the defendant. As a member of an undivided Hindu family is not bound to effect a partition by paying a certain sum of money to his coparceners, the Court in a partition suit ought not to award interest on money decreed to be paid by the defendant to the plaintiff. *LAKSHMAN DADA NAIK v. RAMACHANDRA DADA NAIK. RAMACHANDRA NAIK v. LAKSHMAN DADA NAIK*. I. L. R., 1 Bom., 561

S. C. on appeal to Privy Council [I. L. R., 5 Bom., 48]

112. ——— Account in partition suit.—*Held* that, in the case of joint enjoyment by the members of the whole family, or enjoyment by different members, of different portions of the family property, the Court will not, except under special circumstances, order an account to be taken of past transactions, but will make division of the property actually existing at the date of partition. *Lakshman Dada Naik v. Ramchandra Dada Naik, I. L. R., 1 Bom., 561*; *I. L. R., 5 Bom., 48*, followed. *KONERRAV v. GURRAY* [I. L. R., 5 Bom., 589]

113. ——— Account of mesne profits.—*Infant ejected and excluded from enjoyment of family property.*—The rule which limits the right of members of a Hindu family seeking partition to a division of the family property existing at the date of division does not apply to the case of an infant who has been ejected by the manager from the family-house and excluded from enjoyment of the family property. In such a case the manager is bound to

HINDU LAW—PARTITION—continued.**6. RIGHT TO ACCOUNT ON PARTITION—continued.****Account of mesne profits—continued.**

account to the infant for mesne profits from the date of his exclusion. *KRISHNA v. SUBBANNA* [I. L. R., 7 Mad., 564]

7. EFFECT OF PARTITION.

114. ——— Finality of partition.—*Ground for reopening partition.*—*Fraud.*—*Mistake.*—*Property subsequently recovered.*—Partition once effected is final and cannot be reopened on the ground of the inequality of shares. It can be reopened only in case of fraud, or mistake, or subsequent recovery of family property. *MOW VISHWANATH v. GONESH VITHAL*. 10 Bom., 444

115. ——— Apportionment of debt for which father was jointly liable.—*Effect of separation in estate.*—A family having become separate in estate with apportionment of a debt, once joint, among its several members, the sons of one of the latter, on their father's decease, are not liable for the whole debt for which he, at one time, was responsible jointly with the rest of the family, but only for his portion of the debt. *DURGA PRESHAD v. KESHOPERSAD SINGH* [I. L. R., 8 Calc., 656]; *11 C. L. R., 210* [I. L. R., 9 I. A., 27]

8. AGREEMENT NOT TO PARTITION AND RESTRAINT ON PARTITION.

116. ——— Condition against partition.—*Effect of prohibition.*—Where a neumpuro, executed by the father of a joint Hindu family many years before his death, declared that his four sons were not to divide the property; but that any single member of the family, desiring to make any particular arrangement, would be bound by the wishes of the others, and it happened eventually that one of the sons predeceased his father without issue, and another leaving two sons, who were not bound by the prohibition.—*Held* that, as these grandsons were parties having interest in the property, conditions which do not and cannot affect them ought not to be held to restrain the other co-sharers. *Quare*.—Is such a provision in the deed as that which prohibits partition valid, or is it contrary to Hindu law, *ultra vires*, and null and void? *JEEBUN KRISTO GOSSAMEE v. ROMANATH GOSSAMEE*. 23 W. R., 297

117. ——— Agreement not to partition.—*Perpetuity.*—*Invalid agreement.*—An agreement between coparceners never to divide certain property is invalid by the Hindu law as tending to create a perpetuity. *RAMLINGA KHANAPURI v. VIRUPAKSHI KHANAPURI*. I. L. R., 7 Bom., 538

118. ——— Binding covenant.—The members of a Hindu family, jointly and severally interested in a certain house and premises, covenanted for themselves, their heirs, and executors, that the said house and premises should never be partitioned, except by the unanimous consent of the contracting parties.—*Held* by the lower Court,

HINDU LAW—PARTITION—continued.**8. AGREEMENT NOT TO PARTITION AND RESTRAINT ON PARTITION—continued.****Agreement not to partition—continued.**

and confirmed on appeal, that whether valid or not as regards parties representatives by purchase, the covenant is binding upon those who are personally parties to the deed. **RAMDHUN GHOSH v. ANUND CHUNDER GHOSH** . . . 2 Hyde, 93

119. ——— *Purchaser of share of member of joint family.—Alienation.*—The members of a joint Hindu family entered into an agreement not to partition their estate, which was to "continue in one joint undivided occupation as at present." Held that a purchaser at a sheriff's sale of the share of one of the contracting parties was not bound by the agreement. Such an agreement does not prevent a party to it from alienating his interests in the estate. **ANAND CHANDRA GHOSH v. PRANKRISTO DUTT**

[3 B. L. R., O. C., 14: 11 W. R., O. C., 19

120. ——— *Dedication to idol.—Mortgage.*—*R. D.*, a Hindu, died possessed of large property, both real and personal, and leaving surviving him two sons, *P. D.* and *A. D.*, his sole heirs, who, after his death, came to an amicable partition of some portion of the joint estate, but continued to hold jointly the family dwelling-house and the land thereto attached. On 26th November 1849, *P. D.* and *A. D.* executed a deed of trust of the joint family dwelling-house, among other properties, by which, after reciting that they had kept certain property joint, and that they had been performing the family ceremonies, &c., and that it was their intention that they should be performed in the same manner at the family dwelling-house, and after setting apart certain real property for the expenses thereof, it was agreed that "we will, during our lifetime, jointly perform the said acts after that manner and according to practice: on the death of one of us the survivor and the executor or representatives of the deceased person will act after that manner and according to practice for a period of twenty years from the date of the death of him who shall die last; our executors or representatives will jointly perform, out of the proceeds of the aforesaid real property, the puja and so forth at our dwelling-house in Simla in Calcutta, and entertain strangers at the garden which once appertained to *R. S. B.* The said real property and our dwelling-house and the baitakhana in station Sulkea, &c., neither we nor our heirs or any of them will have the power to make a partition thereof during the said prescribed period. On the expiration of the said period, should our representatives wish to make a partition of all the said real property, &c., having made a division, they will have the power to perform the acts and ceremonies separately." The said dwelling-house was thereafter held jointly by *P. D.* and *A. D.*, on the trusts of the deed of 26th November 1849. *P. D.*, in December 1849, died, leaving two adopted sons, *M. D.*, and another, on the death of whom the plaintiff was adopted. *P. D.* also left a will, whereby he directed that the purport of the deed of 26th November 1849 should never be violated. *A. D.* died 30th January 1856, leaving a

HINDU LAW—PARTITION—continued.**8. AGREEMENT NOT TO PARTITION AND RESTRAINT ON PARTITION—continued.****Agreement not to partition—continued.**

will, whereby he appointed the defendants *N. D.*, *C. G.*, and *S. G.*, executors, and thereby he devised all his property, subject to certain legacies, to *C. G.* and *S. G.* By his will he charged his executors not to fail to carry out the agreement. The ceremonies continued to be performed as directed in the deed by the plaintiff and the defendants *M. D.*, *N. D.*, *C. G.*, and *S. G.* By deed dated 14th July 1863, *N. D.*, *C. G.*, and *S. G.* mortgaged, for valuable consideration, to the defendant *A. B. M.*, certain property, including an undivided share of the said dwelling-house. *A. B. M.* afterwards instituted a suit on the mortgage against *N. D.*, *C. G.*, and *S. G.*, and by the decree in that suit it was, on 14th April 1870, ordered that the defendants should be absolutely foreclosed of all equity of redemption in the said family dwelling-house and other premises comprised in the mortgage. Subsequent proceedings, taken by *A. B. M.* against the defendants *N. D.*, *C. G.*, and *S. G.*, resulted in *A. B. M.* obtaining a writ of possession against them, which he endeavoured, but unsuccessfully, to have executed. The present suit was brought to have the deed of trust of November 26th, 1849, established, and to have the trusts thereof declared. In 1854 two suits had been brought in the Supreme Court; one by *M. D.* and the present plaintiff, and the other by *A. D.*, in which suits decrees were made declaring the will of *P. D.*, and the agreement of 26th November 1849 to be fully proved and established and binding on *A. D.* and his heirs and the representatives of *P. D.* It was found on the evidence in the present suit that the agreement of 26th November 1849 was not fraudulent; that when *A. D.* died the estate belonging to the representatives of *P. D.*, independently of the property set apart, was more than sufficient to meet any claims against the estate of *P. D.*; that the agreement of 26th November 1849 had, up to the present time, been steadily acted on by the representatives of *P. D.* and by the representatives of *A. D.* until very recently; that *A. B. M.* took the mortgage with notice of the agreement and of the fact that it was being acted on under the decrees of the Supreme Court. Held that the family dwelling-house was not absolutely dedicated by the deed of 26th November 1849 to the worship of the deities and performance of the ceremonies mentioned therein, and therefore was not inalienable. But the prohibition in the deed of 26th November 1849 against partition of the family dwelling-house for twenty years after the death of the survivor of *P. D.* and *A. D.* implied also that there should be no alienation of it for twenty years. Until the end of the twenty years *A. B. M.* was not entitled to possession in any shape. **ANATH NATH DRY v. MACKINTOSH** . . . 8 B. L. R., 60

121. ——— *Agreement restraining partition.—Right of purchaser of share.—Trust for idol.*—By an agreement entered into between five brothers, who formed a joint Hindu family, it was provided that none of the parties, "nor their representatives, nor any person, should be able to

HINDU LAW—PARTITION—continued.**8. AGREEMENT NOT TO PARTITION AND RESTRAINT ON PARTITION—continued.****Agreement restraining partition—continued.**

divide the real and personal property belonging to the family into shares; that, while the male descendants of any of the brothers lived, the sons of the daughters of the deceased persons should not be entitled to the real and personal properties, nor to the proceeds thereof; that none of the brothers, nor any of their male descendants, should be able to adopt a son; that, during the lifetime of the brothers, or of the one of them who should be the last survivor, their earnings should be regarded as joint property, and that, if any brother or son of a brother separated himself from the family, he should only get Rs. 20,000 as his share." The agreement further provided for the maintenance of widows and infant children, and that the sum of two lakhs of rupees should be taken from the joint khatta for the purpose of carrying on certain business. The family dwelling-house had belonged to the mother of the brothers. She made a gift by deed of the house and lands and houses appertaining thereto to an idol, and appointed her sons managers, and directed that they should live in the house, and should not have power to partition or alienate any portion of the properties settled. The deed contained provisions as to the disposition of the profits arising from the lands and houses, viz., to provide accommodation for the families of the managers, and to invest the surplus in the purchase of lands in the name of the idol. A son of one of the brothers sold his share in the family property. In a suit by the purchaser for partition and an account of the property,—*Held* that the general scheme of the arrangement between the brothers was such as could only be binding upon the actual parties to it, not upon a purchaser from one of the parties, and *a fortiori* not upon a purchaser from the heir of one of the parties. *Anand Chandra Ghose v. Frankristo Dutt*, 3 B. L. R., O. C., 14, followed. The object of the arrangement was to settle the family property upon trust for the maintenance of the members of the family born and to be born. This could not be done by a gift, and what cannot be done by a gift cannot be done by the intervention of a trust. The owner of property cannot by mere contract during his life prevent his heirs from partitioning property after his death, and such a prohibition is not binding upon an assignee of the heir. *Anath Nath Dey v. Mackintosh*, 8 B. L. R., 60, distinguished. *Held*, also, that there was a good gift of the family dwelling-house to the idol, and that the plaintiff was not entitled to any share therein. *RAJENDER DUTT v. SHAM CHUND MITTER*. I. L. R., 6 Cal., 108

122. — **Clause restraining partition or enjoyment.—Otherwise absolute gift of property.**—Where a Hindu testator gave all his immoveable property to his sons, but postponed their enjoyment thereof by a clause that they should not make any division for twenty years,—*Held* that the restriction was void as being a condition repugnant to the gift, and that the sons were entitled to partition at once. *MOKOONDO LALL SHAW v. GONESH CHUNDER SHAW*. I. L. R., 1 Cal., 104

HINDU LAW—PRESUMPTION OF DEATH.

1. — **Person not heard of for more than twelve years.**—According to Hindu law, a person who has not been heard of for more than twelve years is presumed to be dead. *MANKHE KOER v. KHEDOO LALL*. 2 Hay, 623

2. — **Disappearance.—Absence for twelve years.**—Where a Hindu disappears, and is not heard of for a length of time, no person can succeed to his property as heir until the expiry of twelve years from the date on which he was last heard of. *JANMAJAY MAZUMDAR v. KESHAB LALL GHOSH*

[2 B. L. R., A. C., 134

JUNMAJOY MOJUMDAR v. KESHUB LALL GHOSH

[10 W. R., 484

BULHUDDUR TEWARER v. RAM TEWARER

[1 Agra, 159

3. — **Absence for twelve years.**—The rule of English law, that a period of seven years' absence without tidings is sufficient to raise a presumption of death, cannot be applied in the case of a Hindu. The Hindu law has a rule of its own, requiring the lapse of twelve years before an absent person of whom nothing has been heard can be presumed to be dead. *SARODASUNDARI DEBI v. GOBIND MANI DEBI*

[2 B. L. R., A. C., 157, note

IN THE MATTER OF THE PETITION OF SHUBHO MOYEE DOSSEE. 8 W. R., 421

4. — **Absence for twelve years.—Omission to perform ceremonies for death.**—Where the husband disappears for the prescribed number of years the mere omission of ceremonies being performed by his wife will not prevent the presumption of death from arising. *GHASEE v. JUSONDER*. 2 Agra, 226

5. — **Suit on bond against representatives of obligor.—Lapse of time to create presumption.**—In a suit upon a bond, the plaintiff having sued the defendants, not on the ground of their personal responsibility but as the legal representatives of the obligor, who was supposed to be dead,—*Held* that the suit was not maintainable before the lapse of the time which raises the legal presumption of the death of the obligor, unless there was proof of special circumstances which warrant the inference of his death within a shorter period. *KARUPPAN CHETTI v. VERIYAL*. 4 Mad., 1

6. — **Evidence Act, s. 108.—Suit for administration.**—The reversioners next after *J.* to the estate of *S.* deceased sued to avoid an alienation of *S.*'s estate affecting their reversionary right made by his widow. *J.* had not been heard of for eight or nine years, and there was no proof of his being alive. *Held* that his death might be presumed under the provisions of section 108, Act I of 1872, for the purposes of the suit, although, in a suit for the purpose of administering the estate, the Court might have to apply the Hindu law of succession prescribed when a person is missing and not dead. *PARMESHWAR RAI v. BISHWESWAR SINGH*

[I. L. R., 1 All, 53

HINDU LAW — PRESUMPTION OF DEATH—continued.

7. ——— Evidence Act, ss. 107, 108.—*Presumption of date of death.*—Upon the death of a sonless Hindu, his separate estate devolved upon his two widows, the first of whom had a daughter, who had two sons, G. and S., G. having a son D. After the death of the first widow, the second came into sole possession of the property and so continued till her death in 1882. At that time S. was still living, but G. had not been heard of by any of his relatives or friends since 1869 or 1870. In 1884, a purchaser from S. claimed possession of the whole estate, and was resisted by D., on the ground that the estate had, on the death of the second widow, devolved on his father and S. jointly, and S. was not competent to alienate it. *Held* that the question whether the defendant's father was living at the time of the second widow's death in 1882 was a question of evidence governed by sections 107 and 108 of the Evidence Act; that under the circumstances the defendant's father must be held to have died prior to the time referred to; that consequently, according to the Hindu law, the right of succession to his grandfather's estate did not vest in him jointly with the plaintiff's vendor, so as to enable the defendant to claim through him; that the plaintiff's vendor was therefore competent to alienate the entire estate, and the claim must be allowed. *Mozhar Ali v. Budh Singh, I. L. R., 7 All., 297; Janmajay Mazumdar v. Keshab Lal Ghose, 2 B. L. R., A. C., 184; Gura Dass Nag v. Matilal Nag, 6 B. L. R., Ap., 16; and Parmeshwar Rai v. Bisheshwar Singh, I. L. R., 1 All., 53*, referred to. *DHARUP NATH v. GOBIND SARAN. GOBIND SARAN v. DHARUP NATH. I. L. R., 8 All., 614*

HINDU LAW — RECOVERED PROPERTY.

Decree for possession.—The Hindu law on the subject of "recovered" property applies to cases in which the property has passed from the family to strangers, and has been held by them adversely to the family, and not to cases where the property has been held by one claiming (though unfoundedly) to be a member of the family. Merely obtaining a decree for possession is not "recovering" the property. "Recovery," if not made with the privity of the co-heir, must at least be *bona fide*, and not in fraud or by anticipation of the intentions of the co-heir. *BISSESSUR CHUCKERBUTTY v. SEETUL CHUNDER CHUCKERBUTTY. 9 W. R., 69*

HINDU LAW—REVERSIONERS. Col.

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1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.**(a) WHO MAY SUE.**

1. ——— Suits by reversioners.—*Suit to set aside alienations by Hindu widow.—Suit to restrain Hindu widow from committing waste.—Contingent reversionary interest.*—Persons having a contingent reversionary interest in lands, expectant on the death of a Hindu widow, though they cannot sue for a declaration of title to the lands as against third persons, may sue as presumptive heirs to set aside alienations of the property made by the widow, upon the ground of there being no legal necessity for such alienations, or to restrain her from committing waste. Unless such suits could be brought, it might be impossible, if the widow lived to a great age, to bring evidence after her death to prove that there was no legal necessity for the alienations. Nor would it be possible to prevent the widow from committing irremediable mischief to the estate. *CHOTTOO MISSEER v. JEMAR MISSEER*

[I. L. R., 6 Cal., 198; 6 C. L. R., 588

Contra, RAM MONOHAR SINGH v. KOOLDHEP NARAIN SINGH. 11 W. R., 514

2. ——— Alienation by female tenant for life.—*Waste.—Ground for suit.*—A bill *quid timet* by a reversioner against the daughter of an intestate Hindu in possession of personality, dismissed. A Court of Equity will not interfere, unless it is shown that there is danger from the mode in which the tenant for life in possession is dealing with the property. The mere fact of the tenant for life keeping in hand for about three months part of the *corpus* for the alleged purpose of an eligible investment does not amount to waste, nor is in derogation of the rights of those entitled in reversion. *HERRY DOSS DUTT v. UPPOORNAH DOSSER* [6 Moore's I. A., 483

3. ——— Sale by widow in excess of power.—*Suit by reversioners for share of land sold on payment of proportionate amount of sum properly lent.—Decree for redemption.*—The widow of a Hindu sold to the defendants a portion of her husband's estate for less than its market value and for a sum in excess of what she was justified in raising by sale. The plaintiffs, two or three reversioners entitled to the estate, sued, on the death of the widow, to recover from the purchasers two thirds of the land sold upon payment of two thirds of the sum which the widow was justified in raising. *Held* that the

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.**

(a) WHO MAY SUE—continued.

Suits by reversioners—continued.

plaintiffs were entitled to the relief claimed. *SUBRAMANYA v. PONNUSAMI*. **1 L. R., 8 Mad., 92**

4. ———— *Declaratory decree, Suit for.—Waste by Hindu widow.—Suit to set aside compromise by Hindu widow.*—Where the next reversioner after a Hindu widow sues, during the lifetime of the widow, for a declaration that a compromise made by her is not binding on him, it is no sufficient ground for refusing the declaration that the plaintiff may not succeed for many years to the possession of the property, or that some of the property is of a perishable nature. *UPENDRA NARAIN MYT v. GOPAL NATH BHA*

[**1 L. R., 9 Calc., 817; 12 C. L. R., 350**

5. ———— *Alienation by Hindu widow.—Forfeiture of estate.—Right of reversioners.*—A Hindu widow, entitled to a life-estate only, granted a putni of the lands. *Held*, first, that this did not work a forfeiture entitling the reversioners to enter. Secondly (*STEELE, J.*, dissenting), that the reversioners were not entitled to have the putni set aside. Thirdly, that the putnidar, being a party to the suit, was entitled to appear against that part of the decree which declared that the act of the widow has caused a forfeiture of her estate, as well as against the part of it which set aside his putni. *LALL SOONDAR DOSS v. HUREYKISSEN DOSS* [**Marsh., 113; 1 Ind. Jur., O. S., 32; 1 Hay, 339**

6. ———— *Contingent reversioner.*—A person having only a contingent estate during the lifetime of a Hindu widow, is permitted to sue simply on the ground of the necessity that the contingent reversioner may be under of protecting his contingent interest. It is therefore essential to see that he has such an estate as entitles him to come in that way, *i.e.*, that he holds the character which he professes. *THAKOORAIN SAHIBA v. MOHUN LALL* **7 W. R., P. C., 25**

[**11 Moore's I. A., 386**

7. ———— *Interest sufficient to give right to sue.*—*Held*, under the circumstances, that the plaintiff had sufficient interest to enable him to maintain a suit to question the adoption of a son. *BROJO KISSOREN DOSS v. SREENATH BOSS*

[**8 W. R., 241**

8. ———— *Remote reversioner.*—Suits to set aside improper alienations by a widow cannot be brought by those whose rights are only inchoate and remote, as are those of a minor who is only entitled in reversion after the life-estate of his mother and sister, in the event of their surviving their mother, whose alienations he seeks to set aside. *BAMA SOONDURNE DOSS v. BAMA SOONDURNE DOSS* **10 W. R., 301**

granting review in S. C. **10 W. R., 133**

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.**

(a) WHO MAY SUE—continued.

Suits by reversioners—continued.

9. ———— *Suit to set aside alienation.—Right of remote reversioner.—Relinquishment of right of suit.*—Although a suit to set aside an alienation, alleged to have been illegally made by a Hindu widow, of property belonging to the estate of her deceased husband, should usually be brought by the next and not by a remote reversioner, yet such a suit may be brought by other than the next reversioner where it can be considered as one brought by a person who, by the express declaration of those having prior rights, was entitled to maintain it by reason of their consent, and of their relinquishment in his favour of the right of suit. When this relinquishment is once shown, the suit is open to no objection on the score of its having been instituted without the plaintiff, at the time of the institution, having shown that the prior rights of others had been waived or abandoned in his favour. *AMMER SINGH v. MURDUN SINGH* **2 N. W., 31**

10. ———— *Right to bring a suit for declaratory decree.*—A suit for a declaratory decree must be brought by the nearest reversioner; but there is no objection to a suit by a more distant reversioner when the prior right of the nearer reversioner or reversioners have been waived. *BHUKAJI APAJI v. JAGANNATH VITHAL*. **10 Bom., 351**

11. ———— *Suit by reversioner with consent of reversioner having right to sue.*—A suit by a reversioner to set aside an alienation is cognisable if the title of the reversioner has been injured by a distinct act of alienation, and if the widow who ought to have brought the suit has relinquished her life-interest and signified her assent to the suit proceeding. *BHEEM RAM CHUCKERBUTTY v. HUREE KISHORE ROY* **1 W. R., 359**

12. ———— *Suit to set aside adoption.—Right to sue.*—The mere possibility of succeeding to the estate held by a widow for life does not confer on the person having it the right to sue to contest an adoption alleged to have been made by the widow. Such a suit must be brought either by the presumptive heir, or in the case of his refusal to sue, or precluding himself by act or word from suing, or of his concurring in, or colluding with, the alleged adoption, by the next reversioner. In the latter case, the plaintiff must state why the presumptive heir does not sue, and the Court will, in the exercise of its discretion, decide whether the plaintiff is competent to sue. *GYANENDRO NATH ROY v. LOBONGOMUNJURI DABI* **11 C. L. R., 198**

13. ———— *Alienation by widow.—Suit for declaratory decree.*—Where a Hindu widow in possession as such of her deceased husband's property alienates it, only the person presumptively entitled to possess the property on her death may sue for a declaration of his right as against

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.****(a) WHO MAY SUE—continued.****Suits by reversioners—continued.**

such alienation, unless such person has precluded himself from so suing by collusion and connivance, when the person entitled next to him may so sue. **RAGHU NATH v. THAKURI . I. L. R., 4 All., 16**

14. ——— Suit by reversioner when nearest reversioner cannot sue.—When the immediate reversioner is in possession of a part of the property, and not in a position to institute proceedings to set aside alienations, the next reversioner is entitled to sue to protect his own future rights. **BALGOBIND RAM v. HIRSEKAR . 2 W. R., 255**

15. ——— Persons not the next reversioners.—Right to sue.—Where it appeared there were other persons nearer than plaintiffs, and that there had been no disclaimer of their right on their part,—*Held* that plaintiffs, who, according to the ordinary Hindu law of inheritance, were not the next heirs, could not maintain the suit. **GOOSEHAREN THEKUMJEE v. PURSOTUM LALLJEE**

[3 *Agra*, 238

16. ——— Suit to set aside adoption.—Right of suit.—Although a suit, to contest an adoption made by a Hindu widow of a son to her deceased husband, may be brought by a contingent reversionary heir, yet it is not the law that any one who may have a possibility of succeeding to the estate of inheritance held by the widow for her life is competent to bring such a suit. The right to sue must be limited. As a general rule, the suit must be brought by the presumptive reversionary heir,—that is to say, by the person who would succeed to the estate if the widow were to die at the time of the suit. But it may be brought by a more distant heir, if those nearer in the line of succession are in collusion with the widow, or have precluded themselves from interfering. The rule laid down in *Bhikaji Apaji v. Jagannath Vithal*, 10 *Bom., A. C.*, 351, approved. Reference made to *Koor Golab Singh v. Rao Kurun Singh*, 14 *Moore's I. A.*, 187. If the nearest heir had refused, without sufficient cause, to institute proceedings, or if he had precluded himself by his own act or conduct from suing, or had colluded with the widow, or had concurred in the act alleged to be wrongful, the next presumable heir would be, in respect of his interest, competent to sue. In such a case, upon a plaint stating the circumstances under which the more distant heir claimed to sue, a Court would exercise a judicial discretion in determining whether he was or was not competent, in that respect, to sue; and whether it was requisite or not that any nearer heir should be made a party to the suit. In a suit to have an alleged adoption set aside, the plaintiff, a minor, through his guardian, claimed to sue, on the strength of being the adopted son of the husband of a daughter of a brother of the father of the deceased, under whose authority the

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.****(a) WHO MAY SUE—continued.****Suits by reversioners—continued.**

adoption was alleged to have been made by the widow, the defendant. The Judicial Committee, without deciding that, as an adopted son, this minor had the same rights as a naturally-born son, and without deciding that he would have been entitled, in default of nearer relations, to succeed to the estate of inheritance, after the death of the widow, pointed out, that he could only have succeeded as a distant bandhu, and that he had not a vested but at most a contingent interest. And *held* that there being, in fact, heirs nearer in the line of succession than this minor, the grounds of his competence to sue in respect of his interest, assuming that interest to exist, should have been made out in the manner above indicated. **ANUND KUNWAR v. COURT OF WARDS**

[I. L. R., 6 *Calc.*, 764
[8 C. L. R., 381; I. R., 8 I. A., 14

17. ——— Collusion between widow and transferee.—*Held* that, where the widow and plaintiff, the transferee, were engaged in a scheme for evading the restrictions put by the Hindu law upon the widow's right of alienation, and were making use of the forms of a suit in furtherance of the fraud, it was quite competent for the lower Appellate Court to determine and satisfy itself (some of the persons really interested being minors, and the transaction being open to suspicion as prejudicial to their reversionary rights) of the true nature of the transaction at the instance of the remote reversioner, even had the nearer reversioner been present and consented to the decree being passed in plaintiff's favour. **DOWAR RAI v. BOONDA**

[*Agra*, F. B., 57; *Ed.* 1874, 43

18. ——— Collusion between widow and next heir.—Right of remoter reversioner to sue.—Where a daughter was colluding with the widow in making a transfer of divided property,—*Held* that plaintiffs, the next reversioners after the daughter, were competent to maintain the suit to have the transfer declared null and void. **JWALA NATH v. KULLU**

[3 *Agra*, 55; *Agra*, F. B., *Ed.* 1874, 138

19. ——— Alienation by Hindu widow.—Right to sue.—Daughters.—The reversioners of the estate of a deceased Hindu sued his widow to set aside an alienation of the property by her, as not justified by legal necessity. The deceased had two daughters, who were still living. *Held* that, in the absence of any proof of collusion or connivance between the widow and her daughters, the plaintiffs, in the presence of the latter, were not competent to maintain the suit. **ANUND KOER v. COURT OF WARDS**, I. R., 8 I. A., 14, referred to. **MADARI v. MALIKI**

[I. L. R., 6 *All.*, 428

20. ——— Alienation.—Fraud.—S. was entitled, under the Mitakshara law,

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.**

(a) WHO MAY SUE—continued.

Suits by reversioners—continued.

to succeed, on the death of *M.*, her mother, to the real estate of *N.*, her father. Certain persons disputed *S.*'s right of succession and claimed that they were entitled to succeed to *N.*'s estate on *M.*'s death, and complained that *M.* was wasting the estate. The difference between such persons and *M.* and *N.* were referred by them to arbitration, and an award was made and filed in Court which, among other things, partitioned the estate between *S.* and such persons. *G.*, who claimed the right to succeed to the estate on *S.*'s death, sued for the cancellation of the award on the ground that it was fraudulent and affected his reversionary interests. *Held*, relying on *Dowar v. Boonda, Agra, F. B., 57: Ed. 1873, 43*, that the suit was maintainable notwithstanding that *G.* was not the next reversioner. *GAURI DAT v. GUR SAHAI*

[I. L. R., 2 All, 41]

21. ————— *Partition between widow and mother, both claiming life-interest.—Alienation by mother.—Declaratory decree.*—Upon the death of a Hindu, a dispute as to his separate estate took place between his mother and his widow, which was referred to arbitration and an award was made dividing the property between the disputants. It did not appear that either of them claimed the property absolutely, but they disputed as to who should have a life-interest in it, and this was the subject of the arbitration and of the award. Subsequently the mother executed a deed of gift of part of the property which came to her in favour of her nephews. The daughter and the daughter's sons of the deceased, as reversioners, sued the donees to set aside the gift, asserting that the donor had no power to make it, having under the Hindu law a life-interest only in the property. *Held* that, inasmuch as the donor was in any circumstances entitled to maintenance, and the decision came to upon the arbitration was to put her in possession of half the property, but only on the footing of a woman's interest for life, the defendants could not set up any title by adverse possession on her part to defeat the claim of the reversioners. *Held* also that the plaintiffs were competent to maintain the suit as reversioners to the widow, and were entitled to a decree for a declaration that the gift should not affect any of their rights as reversioners after the widow's death. *GOPI CHAND v. SUJAN KUAR*

I. L. R., 8 All, 648

22. ————— *Alienation by Hindu widow.—Acquiescence.—Right to sue.—Daughter.*—A reversioner of the estate of a deceased Hindu sued for cancellation of a sale-deed executed by the widow, on the ground that it was executed without legal necessity, and for a declaration that the alienation was void and incapable of affecting his right of succession. A daughter of the deceased was still living, and had taken no steps to set aside the sale. *Per MAHMOOD, J.*, that mere delay by a re-

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.**

(a) WHO MAY SUE—continued.

Suits by reversioners—continued.

versioner in instituting a suit to set aside an illegal sale made by a childless Hindu widow cannot be understood to amount to acquiescence in the sale. The acquiescence which would entitle a more remote reversioner to maintain the suit must be such as would amount to an equitable estoppel, precluding the first reversioner from contesting the validity of the sale made by the widow. *Duleep Singh v. Sree Kishoon Panday, 4 N. W., 38*, followed. Also *per MAHMOOD, J.*, that the existence of female heirs, whose right of succession cannot surpass a "widow's estate," does not affect the status of the nearest presumptive reversionary heir to the full ownership of the estate, and that such presumptive heir can maintain a suit for declaratory relief such as was prayed for in the present suit, irrespective of the question of collusion or concurrence by such female heirs in the alienation by a childless Hindu widow or other female heir holding a similar estate. *Chunderkoomar Hazaree v. Dwarkanath Purdhan, S. D. A., 1859, p. 1623*; and *Bal Gobind Ram v. Hirasraee, 2 W. R., 255*, followed. *Bhagwandeon Doobey v. Myna Bae, 11 Moore's I. A., 487*; *Gajapathi Nilamani Patta Maha Devi Garu v. Gajapathi Rhamamani Patta Maha Devi Garu, L. R., 4 I. A., 212*; and *Ram Lal v. Bansee Dher, S. D. A., N. W. P., 1866, p. 67*, referred to. *Anund Koer v. Court of Wards, L. R., 8 I. A., 14*, distinguished. *Per OLDFIELD, J.*, that the nearest reversioner being the widow's daughter, who herself could only take a limited interest in the property, and who had herself taken no steps to set aside the sale, the Court would be exercising a proper discretion in permitting the plaintiff, as the next reversioner after the daughter, to bring the suit. *BALGOBIND v. RAMKUMAR*

I. L. R., 6 All, 431

23. ————— *Right of daughter to sue.*—*Held* that a daughter was competent to sue during the lifetime of her mother, the encumbrancer, the daughter being the immediate reversioner to the property, and her reversionary right being seriously threatened. *GOJAB KOONWER v. SHIB SAHAI*

[2 Agra, 54]

24. ————— *Son's power to sue in lifetime of mother.*—The daughter's son during the lifetime of his mother is not such a reversioner as is competent to challenge the act of his maternal grandmother. *RADHA KISHEN v. BUKHTAWUR LALL*

[1 Agra, 1]

25. ————— *Suit to set aside alienation of ancestral property.—Right of remoter reversioner to sue.*—In a suit by a reversioner to set aside an alienation of ancestral property, where plaintiff questioned the acts of alienation effected jointly by his father and his aunt, it was held that he was entitled to maintain the suit even though his father, and not he, was the immediate reversioner. *REROO RAJ PANDEY v. LALLJEE PANDEY, 24 W. R., 309*

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.**

(a) WHO MAY SUE—continued.

Suits by reversioners—continued.

26. ————— *Right of succession.—Nephews.*—The right of succession accrues to nephews (sisters' sons) whether born before or after the death of their maternal uncle, not on the death of the maternal uncle, but on the death of his widow; and the nephews can sue to question the validity of alienations made by the widow without legal necessity. *GOBIND MONEE DOSSEE v. SHAM LALL BY-SACK. KALEM COOMAR CHOWDERY v. RAMDASS SHAHA* . . . **W. R., 1864, 153**

27. ————— *Alienation by uncle.—Right of nephew.*—Held that a nephew is not competent by Hindu law to object to any alienation of ancestral property directly or indirectly made by his uncle. *GUNGA DEEN RAWUT v. MODHOOSUDUN* [3 **Agra, 4**

28. ————— *Right of nephew.—Consent of heirs.—Daughters-in-law.*—A nephew (who would be next of kin entitled to the property) can, with the consent of his father and his uncles, the persons immediately entitled to succeed to the property, maintain a suit for proprietary possession against the daughters-in-law of a deceased Hindu, who have no other right in the property than a right to maintenance. *LADOOIAH v. SANVALBY* [3 **Agra, 191**

29. ————— *Suit by step-son or step-grandson.—Suit in lifetime of widow.*—A reversioner in the position of son or step-grandson may sue in the lifetime of a Hindu widow in possession to prevent waste. *CHUMMUN MOHUNT v. RAJENDRA SAHOO* . . . **7 W. R., 119**

30. ————— *Alienation by widow.—Right of reversioner to sue.*—A sale by a widow of property derived from her husband, who is divided in interest from his own family, is valid for her life. Such a sale will not be set aside at the instance of a divided brother of the husband. *BRAGAVATAMMA v. PAMPANA GAUD* . . . **2 Mad., 393**

31. ————— *Power of reversioner to assign his interest.—Right of assignee.—Waste.*—A reversionary contingent interest subject to the life-estate of a Hindu widow may be assigned. The assignee of such an interest is entitled to restrain the widow from committing waste. *RYCHURN PAUL v. PEARY MONER DASSEE* . . . **Marsh., 622**

32. ————— *Assignee of reversioner.—Suit by assignee.—Widow's estate.*—During the existence of a Hindu widow's interest in an estate inasmuch as she has in her the whole estate of inheritance, the assignee of a reversionary heir to her husband has no interest therein as such assignee, which will enable him to bring a suit to have a mortgage and decree affecting the estate set aside. This

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.**

(a) WHO MAY SUE—continued.

Suits by reversioners—continued.

is so even though the assignee is the next heir to the property after the assignor. *RAICHARAN PAL v. PYARI MANI DAS* . . . **3 B. L. R., O. C., 70**

RAM BUNSEE KOONWAR v. MOHESHUR KOONWAR [1 **W. R., 338**

(b) WHEN THEY MAY SUE AND HOW.

33. ————— *Cause of action, Accrual of.—Suit for possession.—Effect on reversioner of adoption by widow.*—The right of a reversionary heir to succession, on the death of a widow in possession, is a contingent one. It is only on the death of the widow, when his rights as reversioner are converted into a right to immediate possession, that he is required to sue for possession of the estate. The mere fact of the adoption of another party does not prejudice his rights. Those rights are invaded only when the adopted son, on the death of the widow, takes possession of the property as adopted son. *JUGGENDRONATH BANERJEE v. RAJENDRONATH HOLLAR* [7 **W. R., 357**

34. ————— *Suit for possession of share of estate.*—Where the plaintiff was entitled to a share of the estate of the defendant, a widow, in case she should die not having exercised the right to adopt,—Held that a suit for his share on the widow's failure to adopt within a year must be dismissed, the plaintiff having no present right to possession. Section 162 of *Stranger's Manual, H. L.*, disented from. *RAMAN AMMAL v. SUBHAM ANNAYI alias SUBRAMANIYAN ANNAYI* . . . **2 Mad., 399**

35. ————— *Suit to set aside alienation of estate by widow.*—Where the transfer sought to be set aside was made by the widow in favour of her daughter, who was lawful heir to the property,—Held that the plaintiff, a reversioner, had no present ground of action, as his reversionary right was not prejudiced thereby. *UDHUR SINGH v. RANEE KOONWAR* . . . **1 Agra, 234**

36. ————— *Suit to set aside alienation of property in possession of widow.*—Where property to the immediate possession of which a Hindu widow is entitled is conveyed away by parties having no right to it, the cause of action for a suit to recover possession is afforded thereby to the widow, and not to the reversionary heirs. *JOY MOORUTH KOOKE v. BALDEO SINGH* [21 **W. R., 444**

37. ————— *Suit for share of estate, or to set aside alienation.*—A Hindu reversioner, entitled, after the death of a tenant for life, to a share in the inheritance, cannot lay claim to any definite share, nor can he sue to set aside a transaction affecting the inheritance, so far only as it would

HINDU LAW — REVERSIONERS—continued.**1. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—continued.****(b) WHEN THEY MAY SUE AND HOW—continued.****Cause of action, Accrual of—continued.**

affect his probable share. *KESHAVA SANABHAGA v. LAKSHMINARAYANA* . I. L. R., 6 Mad., 192

2. RIGHT TO POSSESSION.

38. ——— Suit for immediate possession.—Waste on account of alienation by widow.—In cases where the sale by a Hindu widow has been set aside on the ground that no legal necessity has been proved, before a decree for immediate possession can be given to the plaintiff, it must be clearly proved that the property has deteriorated owing to the sale or has been wasted by the purchasers. *CHUTTURDHAREE SINGH v. HURCOOMAREE* . 1 Hay, 107

39. ——— Right of reversioners on alienation being set aside.—Act of widow involving forfeiture of estate.—Although an alienation of property by a widow for other than allowable purposes may be declared void, yet the reversioners are not entitled to immediate possession, unless the widow has committed some act involving forfeiture of the property. *KISHNEE v. KHEALAN RAM*

[2 N. W., 424

BAMASOONDURIE DOSSEE v. BAMA SOONDURIE DOSSEE 10 W. R., 183

in which case, however, a review was granted.

See S. C. 10 W. R., 301

RUGHOOBAR DYAL SINGH v. BHEKAREE SINGH
[22 W. R., 472

40. ——— Suit for possession on account of waste.—Alienation by widow not involving forfeiture.—Plaintiff, who was the reversioner of her father's estate, sued, during the lifetime of her mother who held a life-estate as widow of her husband, for possession of such estate, on the ground that her mother had, without reason, alienated the whole estate, with a few slight exceptions, absolutely to certain persons, who had again re-sold portions thereof. The defendants pleaded that the suit would not lie in the lifetime of the plaintiff's mother. It was found that the alienations were not fraudulent. *Held* that the plaintiff was not entitled to have possession of the property delivered to her, inasmuch as the alienation did not amount to a total destruction of the benefit derivable from the right of succession, and could not therefore be called waste, but that she was entitled only to a declaration that the alienation made by the widow and the subsequent alienations by her alienees should not affect or prejudice the plaintiff or reversioner's interests beyond the lifetime of the widow. *MUDDUN MOHUN SHAHA v. ANUNDMOYI* 5 C. L. R., 49

41. ——— Alienation by widow.—Fraud, Proof of.—A Hindu widow being in possession of certain lakhiraj lands in which she had

HINDU LAW — REVERSIONERS—continued.**2. RIGHT TO POSSESSION—continued.****Suit for possession on account of waste—continued.**

a life-interest, the zemindar brought a suit against a minor reversioner and others to resume the land, obtained an *ex parte* decree, and, whether under colour thereof or not, afterwards obtained possession. The widow who was then dispossessed brought a separate suit to recover the property, in which the reversioner, who had meantime come of age, was joined as a co-plaintiff. Owing to a petition presented by the widow, this suit was treated as having come to an end. *Held* that, in the circumstances, and the consequent jeopardy to the title of the reversioners, the reversioner above referred to was competent, without showing fraud on the part of the widow, to bring a suit to have the land reduced to his possession, and to prevent the zemindar from acquiring title by adverse possession. *CHUNDER KOOMAR GANGOOLY v. RAJ KISHEN BANERJEE*

[14 W. R., 322

42. ——— Collusion of widow with parties in adverse possession.—Suit by a Hindu daughter, for herself and as guardian of her minor son, to recover possession of her deceased father's separate estate. The legal representatives of the estate were, first, the deceased's widow, and after her the plaintiff and her son. The widow not only failed to occupy and manage the estate, but, in collusion with the other defendants claiming under a hostile title, abandoned her rights, alleging that her husband was not separate, but a member of a joint family, and left the hostile holders undisturbed. To preserve the separate estate from becoming extinguished by the operation of the law of limitation, it was necessary to remove the adverse occupants and to place the estate in the possession of some person to be appointed to represent it; and as the widow (the legal representative) never was in possession and did not ask for it, but repudiated all claim to it, it was held that no one had a better right to the possession than the plaintiff, and possession was accordingly decreed to her as manager during the widow's lifetime. *GUNESH DUTT v. LALL MUTTER KOORE*

[17 W. R., 11

See RADHA MOHUN DHUR v. RAM DAS DEY
[3 B. L. R., A. C., 362; 24 W. R., 86, note

SHAMA SOONDURIE CHOWDHRAIN v. JUMOONA CHOWDHRAIN 24 W. R., 86

43. ——— Right to manage property as trustee.—Alienation by widow without necessity.—Waste.—When a widow is proved to have made alienations without legal necessity the reversioner may be appointed to act as her trustee. *DINKISHEN SHATRAH v. GUNGADHUR MOOKERJEE*

[2 Hay, 562

3. RELINQUISHMENT BY WIDOW TO REVERSIONERS.

44. ——— Effect of relinquishment by female.—Title of reversioner on relinquishment.—

HINDU LAW — REVERSIONERS—continued.**3. RELINQUISHMENT BY WIDOW TO REVERSIONERS—continued.****Effect of relinquishment by female—continued.**

The succession of females according to Hindu law is not regular succession and is not based upon the ordinary theory of spiritual benefit. Therefore, if they relinquish their rights in favour of the reversioner, the case is again brought back to the normal state of succession, the effect being to vest in him a complete title. *GUNGA PERSHAD KUR v. SHUMBOONATH BURMAN* **22 W. R., 393**

45. ———— **Effect of relinquishment by widow.**—*Consent of reversioners.*—*Relinquishment to second reversioners.*—According to Hindu law, a widow in possession can relinquish, and, by relinquishing, anticipate for the reversioners their period of succession. A relinquishment in favour of second reversioners is also valid if made with the consent of the first reversioners. *PROTAB CHUNDER ROY CHOWDERY v. JOY MONEE DABEE CHOWDERAIN* [1 W. R., 98]

46. ———— **Surrender of life-estate.**—*Title of reversioners.*—The surrender of her estate by a Hindu widow, or mother, to persons who at that time are unquestionably the heirs by Hindu law of the person from whom she has inherited it, vests in those persons the inheritance which they would take if she at that time were to die. *Shama Soonduree v. Surut'Chunder Dutt*, 8 W. R., 500; and *Gunga Pershad Kur v. Shumboonath Burman*, 22 W. R., 393, followed. *NOFERDOSS ROY v. MODHU SOONDARI BURMONIA* [I. L. R., 5 Cal., 732; 5 C. L. R., 551]

47. ———— **Surrender of possession by widow in consideration of maintenance.**—*Arrangement by reversioners to pay widow maintenance for her life instead of possession of property.*—Where persons who are presumptively the next in succession to a widow, come into an arrangement by which she surrenders possession to them and receives a maintenance from them, such arrangement must be held to be binding as a family arrangement, and would not be altered by one or other of the reversioners dying during the lifetime of the widow. *LALLA KUNDE LALL v. LALLA KALEE PERSHAD* [22 W. R., 307]

4. ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS.

47. ———— **Arrangement by next reversioner allowing her to keep possession.**—*Loss of rights by widow on re-marriage.*—*Act XV of 1856, s. 2.*—Where a widow having lost her rights in her husband's estate on account of remarriage under the provisions of section 2, Act XV of 1856, was allowed to retain possession by the next reversioner,—*Held* that such arrangement by the next reversioner was only binding upon him, and not on the heirs of such reversioner, who, on the death of

HINDU LAW — REVERSIONERS—continued.**4. ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS—continued.****Arrangement by next reversioner allowing her to keep possession—continued.**

the former, were entitled to sue for possession of the property by dispossessing the widow. *KAISHO v. JUMNA* **1 Agra, 140**

5. CONVEYANCE BY WIDOW WITH REVERSIONERS' CONSENT.

48. ———— **Effect of conveyance by widow and reversioners.**—*Title of alienee.*—A Hindu widow in possession and the apparent next taker, by joining in one conveyance, can make a complete title. *KISHEN GEER v. BUSGRET ROY* [14 W. R., 379]

TRILOCHUN CHUCKERBUTTY v. UMESH CHUNDER LAHIRI **7 C. L. R., 571**

49. ———— **Alienation for legal necessity.**—*Binding effect of, on other reversioners.*—*Consent of next reversioner.*—Under the Hindu law current in Bengal a transfer or conveyance by a widow upon the ostensible ground of legal necessity, such transfer or conveyance being assented to by the person who at the time is the next reversioner, will conclude another person, not a party thereto, who is the actual reversioner, upon the death of the widow, from asserting his title to the property. *NOBOKISHORE SARMA ROY v. HARI NATH SARMA ROY* [I. L. R., 10 Cal., 1102]

50. ———— **Power of remoter reversioner to question alienation.**—*Observations on the power of a remoter reversioner to question alienations by a Hindu widow in which the next reversioner has concurred.* *SIA DAS v. GUR SAHAI* [I. L. R., 3 All., 362]

51. ———— **Ratification by reversioner of conveyance by widow.**—*Receipt of rent by reversioner from alienee of widow.*—*Subsequent suit to set aside alienation.*—Where a tenure granted by a widow is recognised, after her death, by the reversionary heir, who receives rent from the holder of the tenure, such receipt amounts to a ratification of the tenure, and a suit to set aside, on the ground of the widow's incompetency to grant it, cannot succeed. *MOHESH CHUNDER BOSE v. UGRA KANT BANERJEE* [24 W. R., 137]

HINDU LAW—STRIDHAN. Col

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| 1. DESCRIPTION AND DEVOLUTION OF STRIDHAN | 2491 |
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See HINDU LAW—CONTRACT—HUSBAND AND WIFE.

[I. L. R., 6 Bom., 470, 473
I. L. R., 1 Bom., 121
I. L. R., 4 Bom., 318]

HINDU LAW—STRIDHAN—continued.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN.**

1. ——— Definition of "stridhan."—*Different classes of stridhan.—Woman married in Asura form.*—The etymological import of the word "stridhan," and the different views with which it is regarded in the Eastern and Western schools of Hindu law, pointed out. The Mitakshara recognises only one class of stridhan, and includes in that class all property acquired by a woman by inheritance. According to the last-mentioned authority, a woman's stridhan, if she has been married by the Asura form, upon her death childless, goes to her mother, her father, and their kindred,—i.e., to the sapindas of her father in the first instance,—and, failing them, to her mother's next of kin; but if a woman has been married according to one of the approved forms, her stridhan descends, upon her death childless, to her husband and his sapindas. Over stridhan acquired by inheritance (so far as it consists of immoveable property) a woman's power of alienation is limited. The Vyavahara Mayukha also considers property acquired by a woman by inheritance to be stridhan, but classes stridhan under two heads—stridhan in a narrower sense, embracing particular species, for which a peculiar mode of devolution is prescribed, and stridhan generally (including stridhan acquired by inheritance), which descends in the same line as if the woman had been a male,—i.e., to her sons and the rest,—and this notwithstanding her having left daughters. Authorities bearing upon the subject of stridhan considered and commented upon. *VIJAYABANGAM v. LAKSHUMAN* **8 Bom., O. C., 244**

2. ——— Property of daughter bequeathed to her by father before her marriage.—The property of a daughter bequeathed to her by her father before her marriage falls within the category of stridhan. *JUDONATH SIBGAR v. BUSSUNT COOMAR ROY CHOWDHRY* [**11 B. L. R., 286; 16 W. R., 105; 19 W. R., 264**]

3. ——— Gift by son to mother for maintenance.—A gift of money by a son to his mother for her maintenance comes within the definition of stridhan in the Hindu law. *DOORGA KOONWAR v. TEJOO KOONWAR* . . . **5 W. R., Mis., 53**

4. ——— Property purchased or acquired by mother.—*Property inherited by daughter from mother.—Interest of Hindu daughter in mother's property.*—A., a Hindu widow, died intestate, leaving her surviving sons of her husband's elder brothers, a sister, and the husband and children of a deceased sister. At the time of her death A. was possessed of certain articles of jewellery given to her on her marriage, and of certain other articles of jewellery, and of Government paper standing in her name, which she had purchased herself. She was also possessed of a share of a house and some Government paper, which had been left to her by the will of her mother. The provisions of the will in question being obscure, the parties interested under it had referred their difficulties to arbitration, and by the award the arbitrators allotted to A. the share of the

HINDU LAW—STRIDHAN—continued.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—continued.****Property purchased or acquired by mother—continued.**

house of which she had died possessed "to be held by her in severalty as a Hindu daughter in a manner prescribed by the Hindu law as prevalent in Bengal," and allotted the Government paper to her," to be taken and enjoyed by her absolutely." In a suit by the sons of A.'s husband's elder brothers claiming the whole of her property as her stridhan,—*Held* that, as far as the source was concerned, all the gifts under the will might well be A.'s stridhan, and that as the award gave her an absolute interest in the Government notes, they were her stridhan and passed to the plaintiffs together with all the jewellery and the Government notes purchased by her; but that, as the award gave her only the interest of a Hindu daughter in the house, and that as what a daughter inherits from her mother does not become her stridhan, the plaintiffs had no claim to the share of the house. *PRANKISEEN LAHA v. NOYANMONEY DASSEE*

[**I. L. R., 5 Cal., 223**]

5. ——— Property acquired by woman by inheritance.—According to Hindu law, property acquired by a woman by inheritance is not to be classed as stridhan. *SENGAMALATHAMMAL v. VALAYUNDA MUDALI* **3 Mad., 312**

6. ——— Husband's estate inherited by widow.—*Benares law.—Power of disposition of widow.*—*Held* that, according to the law of the Benares school, no part of her husband's estate, whether moveable or immoveable, to which a Hindu widow succeeds by inheritance, forms part of her stridhan or peculiar property; and the text of Katyayana must be taken to determine, first, that her power of disposition over both is limited to certain purposes; and secondly, that on her death both pass to the next heir of her husband. *BHUGWANDERN DOBBY v. MYNA BARR* [**9 W. R., F. C., 23; 11 Moore's, I. A., 487**]

7. ——— Immoveable property inherited by mother from son.—According to the Mitakshara and the Vivada Chintamani, all property that a woman inherits does not thereby become stridhan, so as after her death to descend to her heirs. Immoveable property which, in default of other intervening heirs, has been inherited by a mother from her son descends, on the mother's death, not to her heirs, but to the heirs of the son from whom she inherited it. *PUNCHANUND OJHAB v. LALSHAN MISSEER* **3 W. R., 140**

8. ——— Property inherited by sister from brother.—*Law in Bombay Presidency.*—A sister on this side of India, taking as heir to her brother, takes his property as stridhan with an absolute power of disposition over it; and such property upon her death passes in the first instance to her daughters. The sons of such sister have not a vested interest in it as coparceners with their mother. Property acquired by a married woman by inheritance, with the exception of property inherited by a widow

HINDU LAW—STRIDHAN—continued.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—continued.****Property inherited by sister from brother—continued.**

from her husband, classes as stridhan, and descends accordingly. **BHASKAR TRIMBAK ACHARYA v. MAHADEB RAMJI** . . . 6 Bom., O. C., 1

9. ———— Immoveable property inherited by a married woman from her father.—According to the Hindu law of inheritance as received in the Bombay Presidency, immoveable property inherited by a married woman from her father, whether or not it be strictly entitled to the name of stridhan, descends on her death to her own heirs, and not to her father's ascendants according to what is called the "melancholy succession." An inheritance descending on a married woman from her father must be classed as stridhan and descends accordingly. **NAVALRAM ATMARAM v. NANDKISHOR SHIVNARAYAN** . . . 1 Bom., 209

10. ———— Gifts by husband to wife from motives of affection.—*Ornaments for ordinary wear.*—Gifts of affection given by a husband to his wife after marriage are stridhan, and it is not necessary to the preservation of their character as stridhan that they should be constantly worn. If given unreservedly they become the wife's stridhan. If ornaments appear to be ornaments which a wife would ordinarily wear in her station of life, and not those which would be purchased for use only on extraordinary occasions, such as marriages and the like, the presumption is that they are for the ordinary use of the wife and given to her without reservation. They would therefore be regarded as gifts of affection and would constitute stridhan, and would not be liable to attachment and sale for the satisfaction of the husband's debts. **RADHA v. BISHESHUR DASS** [6 N. W., 279]

11. ———— Ornaments given to wife at her marriage.—*Ornaments given after marriage.*—*Sons and daughters.*—Where the wife of a Hindu dies, leaving one son and two daughters, such of her ornaments as were given to her at her marriage, pass to her daughters and not to her son. Those given to her after marriage or by her husband or kindred, pass, according to the *Mayukha*, to the son and daughters in equal shares. **ASHABAI v. TYER HAJI RAHIMUTTULLA**

[I. L. R., 9 Bom., 115]

12. ———— Gift by father to daughter.—*Mesne profits.*—*Inheritance.*—A Hindu, by a deed dated in 1840, gave his daughter, a childless widow, an estate for life in certain property, with remainder on her death to his brother's grandsons; the daughter was put in possession, was dispossessed in 1858, and died in 1862. Under the terms of the deed, the property then went to the survivor of the two grandsons, who in 1864 sold his rights and interests in the property. In 1865 the purchaser brought a suit and recovered possession from the defendants. His representatives now sued for mesne profits of the property from 1860 to 1865. *Held* that the plaintiffs were

HINDU LAW—STRIDHAN—continued.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—continued.****Gift by father to daughter—continued.**

not entitled to mesne profits which had accrued due, but were uncollected, in the lifetime of the daughter; that such mesne profits would go to her heirs, who would alone be entitled to them. **GUREU PRASAD ROY v. NAFAR DAS ROY**

[3 B. L. R., A. C., 121: 11 W. R., 497]

18. ———— Grant to wife and her heirs male.—*Devise by widow to sons.*—*Rights of daughter.*—A Hindu granted certain land to his wife C. and her sons and grandsons for ever. C. devised the land to her son by will. *Held* that the land became the stridhanam of C., that the devise was inoperative under Hindu law, and that the land descended to C.'s daughter. **BHUVANGA RAU v. RAMAYAMMA** . . . I. L. R., 7 Mad., 387

14. ———— Widow's savings from the income of the husband's estate.—A widow's savings from the income of her limited estate are not her stridhan; and if she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose. **ISHREI DUTT KOER v. HANSBUTTI KOERAIN** [I. L. R., 10 Cal., 324: 13 O. L. R., 418 L. R., 10 I. A., 150]

15. ———— Arrears of maintenance due to widow.—Arrears of maintenance due to a Hindu widow at her death do not necessarily revert to the estate from which they were to be derived, on the ground that they were not separated from the *corpus* of that estate during her life. **COURT OF WARDS v. MOHESUR ROY** . . . 16 W. R., 78

16. ———— Immoveable property acquired from deceased uterine brother.—*Power of alienation.*—*Husband's heirs.*—Immoveable property acquired by a childless Hindu widow from her deceased uterine brother is her stridhan and stridhan with which the heirs to her husband have nothing to do. Over such property her control is absolute and unimpeachable, and the relations of her husband have no such reversionary status in respect of it as will entitle them to sue to set aside an alienation of it by her. **MUNIA v. PURAN**

[I. L. R., 5 All., 310]

17. ———— Purchase of immoveable estate with money received from husband.—*Proceeds of jewellery.*—A widow who received presents of moveable property from her husband from time to time during their married life, after his death purchased immoveable estate, partly out of such property and partly with money, the proceeds of jewellery forming part of her stridhanam. *Held* that she could dispose of such immoveable estate as her stridhanam. **VENKATA RAMA RAO v. VENKATA SURIYA RAO**

[I. L. R., 2 Mad., 333: 3 O. L. R., 304]

affirming on appeal decision of High Court in S. C. [I. L. R., 1 Mad., 281]

HINDU LAW—STRIDHAN—continued.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—continued.**

18. ———— Immoveable property inherited by paternal grandmother from grandson.—*Mitakshara law*.—Immoveable property inherited by the paternal grandmother from the grandson does not rank as stridhan and on her death devolve as such on her heirs, but devolves on her death on the heirs of the grandson. *PHUKAR SINGH v. RANJIT SINGH* . . . I. L. R., 1 All., 661

19. ———— Property given to a woman after marriage by her husband's father's sister's son.—*Inheritance*.—With respect to property given to a woman after her marriage by her husband's father's sister's son, the brother, mother, and father are preferable heirs to the husband. *HURBYMOHUN SHAHA v. SHONATUN SHAHA*

[I. L. R., 1 Cal., 275]

20. ———— Stridhan of childless Hindu widow.—*Succession to stridhan*.—*Semle*.—The stridhan of a childless Hindu widow, according to the law of the Western schools, goes to the collateral heirs of her husband, in preference to her own next of kin. *THAKOOR DEYHEE v. BALUK RAM* [2 Ind. Jur., N. S., 108; 10 W. R., P. C., 3; 11 Moore's I. A., 185]

21. ———— *Succession to stridhan*.—Upon the death of a childless Hindu widow who had been married in one of the four approved forms of marriage, *S.*, one of the collateral relatives of her husband, stating that his minor son had been adopted by her, obtained possession of certain property which had formed her stridhan, and mutation of names was effected in the minor's favour in the revenue records. A suit was instituted against *S.* and his son by *C.*, on the allegation that he and *J.*, who were collateral relatives of the widow's husband, were entitled, under the Hindu law, to succeed in moieties to the properties left by her as her stridhan, and claiming recovery of possession of half her property. In defence, the adoption was pleaded, and another plea was that the widow had left a brother who, in the absence of the adoption, would succeed to the property to the exclusion of the plaintiff. The Court of first instance held that the alleged adoption had not been proved. In the lower Appellate Court the plea as to adoption was given up. *Held* that, upon the facts found, the plaintiff was the heir of the deceased widow, and as such entitled to succeed to her stridhan under the Hindu law. *Thakoor Deyhee v. Baluk Ram*, 11 Moore's I. A., 185, followed. *Munia v. Puran*, I. L. R., 5 All., 810, distinguished. *CHAMPAT v. SHIBA* . . . I. L. R., 8 All., 393

22. ———— Property inherited by female.—*Succession to such property*.—An estate inherited by a female does not become her stridhan. Such estate on her death goes to the heirs of the last male heir, and not to the heir of her separate property. *JULESSUR KORE v. UGGUR ROY*

[I. L. R., 9 Cal., 725; 12 C. L. R., 460]

23. ———— Property inherited by female from male.—*Law applicable in Carnatic*.

HINDU LAW—STRIDHAN—continued.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—continued.****Property inherited by female from male—continued.**

—The Mitakshara rule that property inherited by a female from a male is taken by her for only a restricted estate, and devolves, on her death, in the line, if any exists, of such male, is applicable in the Carnatic. *CHOTAYLALL v. CHUNNOO LALL*, L. R., 6 I. A., 15, referred to. *MUTTU VADUGANADHA TEVAR v. DORA SINGHA TEVAR* . . . I. L. R., 3 Mad., 290 [L. R., 8 I. A., 99]

24. ———— Property inherited by daughter from father.—*Succession to such property*.—According to the law of the Mitakshara, a daughter's estate inherited from her father is, like that of a widow inherited from her husband, a limited and restricted estate, and does not, on her death, pass as stridhan to her heirs, but reverts to the heirs of her father. *CHOTAY LALL v. CHUNNOO LALL* . . . 14 B. L. R., 235 [22 W. R., 496]

S. C. on appeal to Privy Council

[I. L. R., 4 Cal., 744
L. R., 6 I. A., 15; 3 C. L. R., 465]

See also *DEO PERSHAD v. LUGOO ROY*

[14 B. L. R., 245, note; 20 W. R., 102]

25. ———— *Devolution of property*.—*D.*, the daughter of one *L.*, died childless in 1866 possessed of certain immoveable property which she had inherited from her father *L.*'s sister *N.* had one son *A.* by her first husband *P.* had a second wife *B.*, whose son *K.* was the father of the defendants. After *P.*'s death his widow *N.* married again and had a son who was the father of the plaintiff. The plaintiff in this suit claimed to recover the property of *D.* from the defendants who had taken possession. He contended that the property having devolved on *A.* through a female must continue to descend in that line and that he was entitled. The defendants claimed as heirs of *A.* *Held* that on *D.*'s death *A.* was the nearest bandhu relation both of *D.* and her father *L.*, and consequently became full owner of the property. On *A.*'s death the defendants, as sons of his half-brother *K.*, became his heirs and were entitled to the property. *DALPAT NAROTAM v. BHAGVAN KHUSHAL*

[I. L. R., 9 Bom., 301]

26. ———— *Devolution of stridhan*.—*Daughters, betrothed and unbetrothed*.—*Devolution of stridhan after first devolution*.—A betrothed daughter is not entitled at her mother's death to share in her stridhan, but the unbetrothed daughters alone inherit with the sons. When stridhan has once devolved as such upon an heir, it does not continue to devolve as stridhan, but afterwards devolves according to the ordinary rules of Hindu law. *SRI-NATH GANGOPADHYA v. SARBAMANGALA DEBI* [2 B. L. R., A. C., 144; 10 W. R., 488]

27. ———— *Property of daughter bequeathed to her by father before marriage*.

HINDU LAW—STRIDHAN—continued.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—continued.****Devolution of stridhan—continued.**

Inheritance.—Mother.—According to the Hindu law as current in Bengal, the mother succeeds to the property of her daughter bequeathed to her by her father before her marriage in preference to her husband. Such property falls within the category of stridhan. *JUDONATH SIRCAR v. BUSSUNT COOMAR ROY CHOWDHRY*

[11 B. L. R., 286; 16 W. R., 105
19 W. R., 284]

28. ———— Succession of woman to impartible zemindari.—If a woman succeeds to an impartible zemindari, the estate which devolves on her demise upon her son does not thereby become self-acquired property in the hands of the latter. *MUTTAYAN CHETTI v. SANGILI VIRA PANDIA CHINNA PAMBIAR* . I. L. R., 3 Mad., 370

29. ———— Mithila law.—Succession.—The stridhan property of a widow, governed by the Mithila law, and married in one of the approved forms of marriage, goes to her husband's brother's son in preference to her sister's son. *BACHHA JHA v. JUGMON JHA*

[I. L. R., 12 Cal., 348]

30. ———— Right of adopted son to succeed to stridhan of co-wife of his adoptive mother.—A son adopted by one wife may succeed to a co-wife's stridhan. *TENGOOWAN CHATTERJEE v. DINONATH BANERJEE* . . . 3 W. R., 49

31. ———— Sowdaick stridhan.—Heirs of wife.—Sowdaick stridhan created by the husband descends, not to his heirs, but to the heirs of the wife. *KASHAN CHUNDER ROY CHOWDERY v. GOUB KISHORE GOCHO* . 10 W. R., 189

2. GIFT OF STRIDHAN.

32. ———— Nature of gift of stridhan.—Maintenance, Provision for.—A gift of stridhan is not equivalent to a provision for maintenance. *JOTARA v. RAMHARI SIRDAR* I. L. R., 10 Cal., 638

3. EFFECT OF UNCHASTITY.

33. ———— Unchastity as incapacitating woman from holding stridhan.—Inheritance and keeping possession of stridhan.—*Per TURNER, Offg. C. J., and OLDFIELD, J.*—Unchastity in a woman does not incapacitate her from inheriting stridhan. *Per PEARSON and SPARKIE, JJ.*—Unchastity in a woman does not preclude her from keeping possession by right of inheritance of stridhan. *GANGA JATI v. GHASITA* . I. L. R., 1 All., 46

4. POWER TO DISPOSE OF STRIDHAN.

34. ———— Power of married woman to dispose of stridhan.—Immoveable property bought with stridhan.—Under the Hindu law a married woman is at liberty to make any disposition she likes of money constituting her stridhan or separate and peculiar property, and if she purchases

HINDU LAW—STRIDHAN—continued.**4. POWER TO DISPOSE OF STRIDHAN—continued.****Power of married woman to dispose of stridhan—continued.**

immoveable property with such stridhan she has a right to sell that immoveable property. *LUGHMUN CHUNDER GHEE GOSSAIN v. KALICHURN SINGH*
[19 W. R., 292]

HINDU LAW—USURY.

1. ———— Rate of interest.—Act XXVIII of 1855.—Act XXVIII of 1855 did not repeal the Hindu laws as to the rate of interest. Such rate is governed by the strict rules of Hindu law, as originally laid down by Menu and other lawgivers. *RAM-LAL MOOKERJEE v. HARAN CHANDRA DEBE*
[3 B. L. R., O. C., 130; 12 W. R., O. C., 9]

2. ———— Hindu law.—Contract.—Act XXVIII of 1855.—Act XXVIII of 1855 does not affect or supersede the rules of the Hindu law as to interest. *HAKMA MANJI v. MEMAN AYAB HAJI* . . . 7 Bom., O. C., 19

3. ———— Amount of interest recoverable.—Interest exceeding principal.—By the Hindu law, interest exceeding in amount the principal sum cannot be recovered at one time. Act XXVIII of 1855 has not, by repealing section 12 of Regulation V of 1827, or otherwise, altered this rule of the Hindu law. *KHUSHALCHAND LALCHAND v. ISRAHIM FAKIR. RAM KRISHNABHAT v. VITHABA BIN MALHARJI*
[8 Bom., A. C., 23]

See KADARI BIN RANU v. ATMARAMBHAT
[3 Bom., A. C., 11, at p. 18]

4. ———— Interest exceeding principal.—Usury laws.—Act XXVIII of 1855.—Contract Act (IX of 1872), s. 10.—According to Hindu law, arrears of interest more than sufficient to double the debt are not recoverable, and the law upon this point was not affected by the Act (XXVIII of 1855) for the repeal of the usury laws, nor by section 10 of the Contract Act. *Semble.*—The rule of Hindu law in question has not properly anything to do with the legality or illegality of any contract, but is rather a rule of limitation. *RAMCONNOY AUDICARRY v. JOHNA LALL DUTT*
[I. L. R., 5 Cal., 867; 7 C. L. R., 204]

5. ———— Interest exceeding principal.—Mad. Reg. XXXIV of 1802.—Regulation XXXIV of 1802 having been repealed, a claim in a suit between Hindus for an amount of interest exceeding the principal sum due is maintainable. *ANNAJI RAU v. RAGHUBAI alias SITHUBAI*
[6 Mad., 400]

6. ———— Interest exceeding principal.—Mad. Reg. XXXIV of 1802.—Where part payments were made on a bond, and credited in discharge of the principal, and an action was brought for the balance of the principal and for interest, and the lower Court allowed a sum for interest as due at the date of the plaint which was greater than the

HINDU LAW—USURY.—Amount of interest recoverable—continued.

principal, the High Court disallowed the excess. The provision in section 4 of Regulation XXXIV of 1802, against an award of interest in excess of the principal, refers only to the amount claimed for interest at the time the suit is brought. The rule of Hindu law as to recoverable arrears of interest discussed. **KAKRALAPUDI SITARAMARAJA v. UPPALAPADI JANAKAYYA** 1 Mad., 5

7. ————— *Interest exceeding principal.*—By Hindu law the amount recoverable at any one time for interest or arrears of interest on money lent cannot exceed the principal; but if the principal remained outstanding, and the interest be paid in smaller sums from time to time, there is no limit to the amount which may be thus received in respect of interest. The previous decisions of the Sudder Court to the contrary overruled. **DHONDU JAGANNATH v. NARAYAN RAM CHANDRA** . 1 Bom., 47

8. ————— *Interest exceeding principal.*—*Damdupat, Rule of.*—The Hindu law rule of damdupat does not operate when the defendant is other than a Hindu. **NANCHAND HANSEKAR v. BAPUSAHIB RUSTAMBHAI** . 1 L. R., 3 Bom., 131

9. ————— *Interest exceeding principal.*—*Usury.*—*Contract.*—The rule of Hindu law, prohibiting the recovery of interest exceeding in amount the principal sum lent, is not applicable to suits brought in Mofussil Courts in Bengal. **DREN DOYAL PORAMANICK v. KYLAS CHUNDER PAL CHOWDHRY** . 1 L. R., 1 Cal., 92; 24 W. R., 106

10. ————— *Interest exceeding principal.*—*Suits between Hindus in mofussil.*—*Act XXVIII of 1855, s. 2.*—In suits between Hindus in the mofussil, interest exceeding the principal may be awarded. **HET NARAIN SINGH v. RAM DEIN SINGH**
[1 L. R., 9 Cal., 371; 12 C. L. R., 590]

11. ————— *Interest exceeding principal.*—*Debtor and creditor.*—*Damdupat.*—Since the passing of Act XXVIII of 1855, a Hindu creditor may claim from his Hindu debtor interest in excess of the principal sum lent, should such interest have accrued. The rule of law prohibiting the recovery of interest in excess of the principal sum lent was in force in the mofussil of Bengal not as a provision of Hindu law, but as a statutory rule introduced by Regulation XV of 1793, and embracing all persons contracting in the mofussil. **SUREYA NARAIN SINGH v. SIEDHARY LALL**
[1 L. R., 9 Cal., 325; 12 C. L. R., 400]

12. ————— *Interest exceeding principal.*—*Amount recoverable in execution of decree.*—*Damdupat, Rule of.*—The rule of Hindu law which limits the amount recoverable at one time by way of interest to the amount of the principal, does not apply to an amount recoverable in execution of the decree of a Civil Court. **BALAKRISHNA BHALCHANDRA v. GOPAL RAGHUNATH**

[1 L. R., 1 Bom., 73]

See **RAMACHANDRA v. BHIMBAO**

[1 L. R., 1 Bom., 577]

HINDU LAW—USURY.—Amount of interest recoverable—continued.

13. ————— *Interest exceeding principal.*—*Mortgage transactions.*—The rule of Hindu law which declares that interest exceeding in amount the principal sum cannot be recovered at any one time is not applicable to mortgage transactions. **NARAYAN BIN BABAJI v. GUNGARAM BIN KRISHNAJI** 5 Bom., A. C., 157

14. ————— *Interest exceeding principal.*—The rule of Hindu law that interest beyond the amount of the principal sum cannot be recovered at any one time applies as well to mortgage transactions as to other loans. But where the mortgagee enters into possession of the mortgaged property, and in taking the accounts between the mortgagor and mortgagee credit is given to the latter for the rents and profits received by him as against the principal and interest due, the above rule cannot equitably be applied. **NATHUBHAI PANACHAND v. MULCHAND HIRACHAND** . 5 Bom., A. C., 196

15. ————— *Interest exceeding principal.*—*Mortgage transactions.*—*Held*, in a case of deposit for redemption of a mortgage, that the principal and an equal sum for interest was sufficient, and that no more interest could accrue during the year of grace, as the law prohibited interest in excess of the principal. **SHEOBHAI v. DHAREE THAKOOR** 2 Agra, Pt. II, 194

16. ————— *Interest exceeding principal.*—*Rule of damdupat.*—*Mortgage transactions.*—According to the Hindu law of damdupat interest exceeding the principal sum lent cannot be recovered at any one time. Cases bearing upon the subject of damdupat, and how far and when that law is applicable to loans upon mortgage, reviewed and considered. **NARAYAN v. SATVAJI** . 9 Bom., 83

17. ————— *Interest exceeding principal.*—*Damdupat, Rule of.*—*Mortgage transactions.*—*Suit for foreclosure.*—In a suit for foreclosure of an equitable mortgage, *Held* that the plaintiff could not recover interest to an amount exceeding the principal sum lent; the rule of damdupat being applicable in a case of a mortgage by a Hindu where no account of rents and profits is to be taken. **GANPAT PANDURANG v. ADARJI DADABHAI**
[1 L. R., 3 Bom., 312]

18. ————— *Interest exceeding principal.*—*Rule of damdupat.*—*Limitation.*—In a suit by the assignees of the equity of redemption for possession on payment of the mortgage-money, *Held*, the question of the period for which interest was to be allowed was, therefore, to be determined by Act XV of 1877, the Act in force at the date of the institution of this suit, article 132 of which applied; but as the rule of damdupat is not affected by Limitation Acts, the defendants could not be allowed, as interest, more than the amount of the principal on which it was to be paid. **HARI MAHA-DAJI v. BALAMBHAT RAGHUNATH**

[1 L. R., 9 Bom., 233]

HINDU LAW—WIDOW.

Col.

1. INTEREST IN ESTATE OF HUSBAND— . 2501
 - (a) BY INHERITANCE . . . 2501
 - (b) BY DEED, GIFT, OR WILL . . 2504
2. POWER OF WIDOW— . . . 2507
 - (a) POWER TO COMPROMISE . . . 2507
 - (b) POWER OF DISPOSITION OR ALIENATION . . . 2508
3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY . . . 2514
4. DISQUALIFICATIONS— . . . 2524
 - (a) RE-MARRIAGE . . . 2524
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See CASES UNDER HINDU LAW—ADOPTION—WHO MAY ADOPT.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

See HINDU LAW—CONTRACT—HUSBAND AND WIFE . I. L. R., 6 Bom., 470

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT.

[I. L. R., 2 Calo., 365
I. L. R., 9 Calo., 766

See CASES UNDER HINDU LAW—FAMILY DWELLING-HOUSE.

See HINDU LAW—GIFT—POWER TO MAKE AND ACCEPT GIFTS.

[I. L. R., 1 All., 734

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW.

See CASES UNDER HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

See CASES UNDER HINDU LAW—PARTITION—RIGHT TO PARTITION—WIDOW.

See CASES UNDER HINDU LAW—PARTITION—SHARES ON PARTITION—WIDOW.

See CASES UNDER HINDU LAW—REVERSIONERS.

See LETTERS OF ADMINISTRATION.

[I. L. R., 2 Calo., 431
I. L. R., 4 Calo., 87

See LIMITATION ACT, 1877, ARTS. 125, 140, 141.

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT.

[I. L. R., 11 Calo., 492

1. INTEREST IN ESTATE OF HUSBAND.

(a) BY INHERITANCE.

1. ———— *Right of widow in husband's property.—Registration of name.*—A widow under the Hindu law is entitled to succeed to her husband's property, and to have her name registered as proprietor. *DEEPO DEBIA v. GOBINDO DEB*

[16 W. R., 42

HINDU LAW—WIDOW—continued.**1. INTEREST IN ESTATE OF HUSBAND—continued.**

(a) BY INHERITANCE—continued.

2. ———— *Estate taken by widow.—Life-estate.*—A widow is entitled by law to a life-estate in her husband's property. *GIEDHARE SINGH v. KOOLAHUL SINGH*
[6 W. R., P. C., 1: 2 Moore's I. A., 344

3. ———— *Immoveable property.—Nature of right.*—A Hindu widow has an absolute right to the fullest beneficial interest in her husband's property inherited by her for her life. She takes as heir a proprietary estate in the land absolute for some purposes, although in some respects subject to special qualifications, and her disposition of the property is good for her life. The proposition that a widow has no estate in her husband's immoveable property, but only the personal enjoyment of the usufruct, is untenable. *KAMAVADHANI VENKATA SUBHAYA v. JOYSA NARASINGAPPA* . . . 3 Mad., 116

4. ———— *Childless widow.—Mitakshara law.—Qualified interest.*—A childless widow, under the Mitakshara law, takes only a limited interest in her husband's estate, similar to that taken by a childless widow according to the law of the Bengal school. *PANCHOOURE MAHTOON v. KALKE CHURN* . . . 9 W. R., 490

5. ———— *Widow succeeding in default of male issue.—Qualified interest.*—A widow, who succeeds to the estate of her husband in default of male issue, whether she takes by inheritance or by survivorship, does not take a mere life-estate. The whole estate is, for the time, vested in her; though in some respects for only a qualified interest. She holds an estate of inheritance to herself and the heirs of her husband; and upon the termination of that estate, the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death. *MOTIRAM KOLITA v. KERI KOLITANI*
[I. L. R., 5 Calo., 776: 6 C. L. R., 322

6. ———— *Right to divided property.*—According to the Hindu law, a widow cannot claim an undivided property. *REWAN PRASAD v. RADHA BIBEE*
[7 W. R., P. C., 35: 4 Moore's I. A., 137

7. ———— *Right of widow as to vested property of husband under a will.*—The doctrine of the Hindu law that a widow succeeding as heir to her husband cannot recover property of which he was not possessed, does not apply when the husband has a vested interest under a will or deed, the actual enjoyment being postponed. *HURROOCHDERY DEBIA CHOWDRANEE v. RAJESURE DEBIA*
[2 W. R., 321

8. ———— *Interest of Hindu widow in husband's property, Power of disposal of, as against reversioners.*—The widow of one of the brothers of a divided Hindu family, governed by the Mitakshara law, does not acquire an absolute interest

HINDU LAW—WIDOW—continued.**1. INTEREST IN ESTATE OF HUSBAND—continued.****(a) BY INHERITANCE—continued.****Estate taken by widow—continued.**

in her husband's separate estate, but only such an interest as would render her acts conveying her interest to a third party binding as against herself, but not as against the reversionary heirs, unless the alienations were made under legal necessity. **CHHET BANOO v. RAM KISHEN SINGH. RAM KISHEN SINGH v. CHHET BANOO** . . . **W. R., 1864, 102**

9. ——— Trustees.—Daughter's estate.—The title of a Hindu widow to her husband's property, though a restrictive one, is not in the nature of a trust. *Quare*,—Whether by the Hindu law current in Bengal the interest of a daughter in the estate of her deceased father is of the same nature as that of a widow. **HURRYDOSS DUTT v. UPFOONAH DOSSER** . . . **6 Moore's I. A., 433**

10. ——— Power of husband to cut down by deed wife's absolute estate to a life-interest.—Where a Hindu wife is entitled to an absolute estate in certain property, her husband cannot cut down her interest to a life-interest by any dowl which he may make. **MOHIMA CHUNDER ROY v. DURGAMONER** . . . **23 W. R., 184**

11. ——— Liability of heir for debts left by widow.—By Hindu law a widow is allowed, during her lifetime, to make the fullest use of the usufruct of her husband's estate; but whatever part of it she leaves behind at her death becomes the property of the next heir, and is not liable for her personal debts, unless such debts have been contracted under legal necessity and for the benefit of the estate. **CHUNDRABULEE DEBIA v. BRODY** [**9 W. R., 584**]

12. ——— Savings or accumulations by widow.—One *M.* died in 1872, leaving him surviving his widow, *F.*, and a grandson, *G.*, and a daughter-in-law. The widow (*F.*) on her husband's death became entitled to a widow's estate in his immoveable property, and accordingly entered into possession and management thereof. Under certain agreements made between her and one *K.*, the latter received the rents of certain portions of the said immoveable property, and in consideration paid *F.* certain fixed annual sums. On the 26th May 1883 there was a balance of **Rs. 1,787-10-3** due from *K.* to *F.* in respect of the yearly privilege of recovering and receiving the said rents. *F.* died intestate on the 18th December 1884, and the plaintiff, having obtained letters of administration to her estate, demanded payment of the said sum of **Rs. 1,787-10-3** from *K.* It appeared that, after *F.*'s death, *K.* had paid this sum to *G.*, who was *F.*'s grandson and the reversioner expectant on the determination of *F.*'s widow's estate, and on her death had succeeded to all the immoveable property as the right heir of her husband *M.* The question was, whether the said sum of **Rs. 1,787-10-3** belonged to *F.*'s estate, or remained portion of the immoveable property of *M.*, and, as such, properly payable to *G.* as his heir. *Held* that the

HINDU LAW—WIDOW—continued.**1. INTEREST IN ESTATE OF HUSBAND—continued.****(a) BY INHERITANCE—continued.****Estate taken by widow—continued.**

plaintiff was entitled to recover it as part of *F.*'s estate. There was nothing to show it to be "savings or accumulations" so as to give it to the heir to her husband's estate. **RIVETT-CARNAO (ADMINISTRATOR GENERAL, BOMBAY) v. JIVIBAI**

[**I. L. R., 10 Bom., 478**]

13. ——— Acquisitions by widow.—Liability of property purchased by her for her debts.—Liability of heir to pay widow's debts.—Power to borrow money on security of estate.—The property acquired by a Hindu widow by purchase, with moneys borrowed on her own credit, is liable to be sold in satisfaction of her debts. Where a Hindu widow has acquired property purchased by moneys borrowed on the credit of her husband's estate, it is equitable that the heir of the husband, who takes in succession to her, should not be permitted to take such acquired property freed from the liability of satisfying a debt contracted by the widow to enable her to make the acquisition, and if the heir claims to take the acquisition, he is bound to satisfy the debt. A Hindu widow may encumber her husband's estate for her own maintenance; consequently, it seems that, if she can derive no income from the estate sufficient for her maintenance, there being no funds for cultivation, she would be at liberty to borrow money, on the security of the estate, for the purposes of cultivation and provision for herself. **ODDER SINGH v. PHOOL CHUND** . . . **5 N. W., 197**

14. ——— Money advanced by widow.—Presumption as to its being husband's property.—Where Hindu widows acquire property by advancing money during an interval when they are out of possession of their deceased husband's estate, the money so advanced cannot be presumed to be a part of the proceeds of that estate. **GOBIND CHUNDER MOJOMDAR v. DULMEER KHAN**

[**23 W. R., 125**]

(b) BY DEED, GIFT, OR WILL.

15. ——— Devise by will.—Widow's estate.—Married woman.—The rule of Hindu law by which widows take only a qualified estate in their husband's property has no application to a devise under a will to married women. **CHUNDER MONY DASSEE v. HURRY DASS MITTER** . **5 C. L. R., 557**

16. ——— Construction of will.—Estate taken by widow.—Alienation by justifying necessity.—The will of a Hindu testator who died in 1852 leaving a widow and daughters contained the following provisions: "To my wife *B.*, who is my next heir, I give the following properties on these conditions: I shall have entire control of them during my lifetime, and after my death my wife taking possession of them shall perform with the proceeds my obsequies and the expenses for the marriage, maintenance, and support, according to the family usage, of my three daughters. She shall have 4 annas of

HINDU LAW—WIDOW—continued.**1. INTEREST IN ESTATE OF HUSBAND—continued.****(b) BY DEED, GIFT, OR WILL—continued.****Devise by will—continued.**

talooks A. and B., in the possession of my step-mother, for her necessary expenses and the performance of charity. According to the above conditions my stepmother shall take possession of these two properties and my wife of all the remaining real and personal estate." *Held* that the widow took only a life-estate. *Held*, further, that the daughters were entitled to a declaration that a sale by the widow to the defendants, of the properties given by the will was for her life only, the defendants being unable to show any justifying necessity which would entitle her to sell the entire estate. **KULLIANBUTTI KOER v. TULAPAL SINGH** . . . 11 C. L. R., 204

17. ——— Deed of arrangement giving property to widow "for her sole use and benefit."—Interest in property of husband.—A deed of arrangement and release in the English form, between members of a Hindu family in respect of certain joint estate, claimed by a childless Hindu widow of one of the co-heirs in her character of heiress and legal personal representative of her deceased husband, declared that she was entitled to the sum therein expressed as the share of her deceased husband "for her sole absolute use and benefit." *Held* (reversing the decree of the Supreme Court at Calcutta) that these words were not to receive the same interpretation as a Court of Equity in England would put upon them, as creating a separate estate in the widow; but that the deed must be construed with reference to the situation of the parties and the rights of the widow by the Hindu law, and that, as the deed recited that she claimed and received the money as her husband's share in the joint estate in her character as his heiress and legal personal representative, such words must be construed to mean that it was to be held by her in severalty from the joint estate, and as a Hindu widow she had only a life-estate in the corpus, the same at her death devolved as assets of her deceased husband upon his personal representative in succession. In reversing such decree, the Judicial Committee directed that interest at the usual rate allowed by the Supreme Court should be allowed from the death of the widow. **RABUTTY DOSSEN v. SIBCHUNDER MULLICK** . . . 6 Moore's L. A., 1

18. ——— Gift of moveable and immoveable property.—Power of alienation.—Under a gift of moveable and immoveable property by a Hindu to his wife, the wife takes only a life-estate in the immoveable property, and has no power of alienation over it, while her dominion over the moveable property is absolute. A Hindu wife takes by the will of her husband no more absolute right over the property bequeathed than she would take over such property if conferred upon her by gift during the lifetime of her husband, and whether in respect of a gift or a will, it is necessary for the husband to give her in express terms a heritable right or power of alienation. **KOONJBEHARI DEUR v. PREMCHAND DUTT** [I. L. R., 5 Cal., 684; 5 C. L. R., 561]

HINDU LAW—WIDOW—continued.**1. INTEREST IN ESTATE OF HUSBAND—continued.****(b) BY DEED, GIFT, OR WILL—continued.**

19. ——— Deed of gift to widow, —Construction of.—Life-estate.—In this case the decision of the High Court, reported in 7 B. L. R., 98, was reversed by the Privy Council, who held that the effect of the instruments was to give the widow an estate for life with power to use the proceeds as she chose, and consequently that the proceeds, or property purchased by her out of the proceeds, would belong on her decease to her heirs. **BHAGBUTTI DHYI v. BHOLANATH THAKOOR**

[I. L. R., 1 Cal., 104; 24 W. R., 168
L. R., 2 I. A., 256]

20. ——— Gift containing power of adoption.—Interest in moveable and immoveable property.—A Hindu gave a power of adoption to his wife, directing that so long as the wife should live she should remain in possession of all his property, moveable and immoveable, ancestral as well as self-acquired. *Held* that the widow took a life-interest in her deceased husband's property with remainder to the adopted son. **Bhagbati Doss v. Bholanath Thakoor**, L. R., 2 I. A., 256, followed. **BEJIN BAKARI BUNDOFADHYA v. BROJO NATH MOOKHOPADHYA** . . . I. L. R., 8 Cal., 357

21. ——— Bill of sale, Construction of.—Estate of, as heiress of her son.—Estate given to be held in severalty absolutely.—M., a member of a joint Hindu family, died, leaving three sons, K., G., and D., and a widow, R., who was mother of G. and D. G. having died, R., claiming as mother and heiress of G., joined with D., in bringing a suit for partition against K. and the other members of the joint family. The decree in the suit, which was made by consent of all parties, declared R. and D. entitled to two equal twelfth parts of the joint estate, and K. to one-twelfth share, and referred it to certain persons as arbitrators, and not as commissioners only, to make the award. The arbitrators allotted certain land to R. and D. as their two twelfths of the joint immoveable property, "to be held by them in severalty absolutely;" to K. they allotted other land as his one-twelfth share; and in pursuance of an arrangement come to between K. and R. and D., they directed K. to sell and convey his one-twelfth share to R. and D., on receiving from them the sum at which it was valued. R. and D. paid the money, and K. conveyed his share to them by a Bengali bill of sale, in which, after stating that he conveyed it in accordance with the award, he added: "Becoming from this day invested with my rights, you have become proprietors of the right of gift and sale. I have no further connection with the said land. Paying the taxes, revenue, &c., to Government, and causing mutation of names, you will continue, with your sons and grandsons in succession, to enjoy possession in perfect peace." In a suit brought by K. against the executor of R., to recover a moiety of the property awarded to her and D., and of the property conveyed to them by the bill of sale, upon an allegation that R. took this property only as mother and heiress of G., and

HINDU LAW—WIDOW—continued.**1. INTEREST IN ESTATE OF HUSBAND—continued.****(b) BY DEED, GIFT, OR WILL—continued.****Bill of sale, Construction of—continued.**

that, upon her death, it devolved upon him as *G.'s* next of kin.—*Held* (reversing the decision of *MACPHERSON, J.*) that *E.* took an absolute estate, and not merely a life-interest, both in the property awarded to her and in the property conveyed by the bill of sale. *BOLYE CHUND DUTT v. KHETTERPAL BYSAOK* [11 B. L. R., 459]

2. POWER OF WIDOW.**(a) POWER TO COMPROMISE.**

22. ——— Nature of power to compromise.—Assertion of rights.—Right of appeal.—A Hindu widow, as representative of the entire estate in litigation, has the same control with respect to compromise as she has with respect to the assertion of rights and with respect to appeal against an adverse decision. *TARINI CHARAN GANGULI v. WATSON*. 3 B. L. R., A. C., 437; 12 W. R., 413

23. ——— Nature of compromise by widow.—Reversioners.—Alienation.—A compromise by which a Hindu widow gives up all her rights in her husband's estate, receiving only a life-interest in a part of it, cannot but be regarded as an alienation, and is not binding against the reversioners. *INDRO KOOR v. ABDOL BURKUT*. 14 W. R., 146

24. ——— Compromise of suit.—Disclaimer of interest.—In a suit for the recovery of a share of joint property the plaintiff's maternal aunts, childless Hindu widows, who were entitled to a prior life-interest to which the plaintiff's reversion was subject, filed a petition disclaiming their interest and assenting to the suit.—*Held* that the Judge might make a decree founded upon the disclaimer of the widows. *RUJONENKAT MITTER v. PREMCHAND BOSE*. Marsh., 241; 1 Hay, 513

SHAMA SOONDUREN v. SHURUT CHUNDER DUTT [8 W. R., 500]

25. ——— Compromise made by widow, Effect of.—Claim under alleged adoption.—Minor daughters.—In a suit in which a claim was made, in virtue of an alleged adoption, to the estate of a deceased Hindu, the widow made a compromise, which was not in writing, with the claimant, wherein the adoption was admitted, but alleged to have been on condition that the widow should enjoy the entire property for her life without power of alienation and that, after her death, her minor daughters should take the self-acquired property, and that the claimant should succeed to the ancestral estate. *Held* that the daughters could not under any circumstances be bound by the compromise. Judgment of the High Court reversed on the facts. *LMRIT KONWUR v. ROOF NARAIN SINGH*

[6 C. L. R., 76]

26. ——— Alienation.—Reversioner.—Limitation.—*C.*, the brother of *A.* and *B.*,

HINDU LAW—WIDOW—continued.**2. POWER OF WIDOW—continued.****(a) POWER TO COMPROMISE—continued.****Compromise made by widow, Effect of—continued.**

died in 1835, and an order for mutation and registration of names having been obtained by *A.* and the heirs of *B.* on the 28th March 1835, *K.*, the widow of *C.*, instituted a suit to have the order cancelled and to have her possession confirmed, and on the 4th September 1837 obtained a decree, which, however, was reversed on appeal on the 24th July 1839, the Appellate Court declaring that *K.* was not entitled as her husband's heir. A special appeal having been preferred to, and admitted by, the High Court, an *ikrarnamah* was filed by *K.* on the 15th September 1841, reciting that she had "given up her claim of having the appeal heard" "as a matter of amicable adjustment settling all disputes" as therein provided. By the *ikrarnamah* it was provided that the *milkiut* and *mokurrari* of certain *mouzas* should be held by *A.* and *B.'s* heirs, and that *mouzas* *X.*, *Y.*, and *Z.* should remain in *K.'s* possession for her life without power to make *sur-i-peshgi* leases or mortgages, and that on her death such *mouzas* should pass to the heirs of *A.* and *B.* On the *ikrarnamah* being filed the Court struck off the appeal and made an order on the 14th September 1841, to the effect that the *ikrarnamah* should "in no way affect the rights of the minors," the heirs of *A.* and *B.* *Held* that the *ikrarnamah* and order of the 14th September 1841 could not be regarded as affecting the rights of the reversioners of *C.'s* estate on the expiration of the widow's life-interest. *Held* also, that the suit by *K.* and the succeeding compromise was tantamount to an alienation by her, and that there was consequently no adverse possession during her life, and that the period of limitation in a suit by the reversioners must be calculated from her death. *SHEO NARAIN SINGH v. KURGO KOREY. SHEO NARAIN SINGH v. BISHEN PROSAD SINGH*. 10 C. L. R., 337

(b) POWER OF DISPOSITION OR ALIENATION.

27. ——— Power of alienation.—Alienation for religious or charitable purposes.—Necessity.—Right of Crown taking property to set aside alienation.—Onus probandi.—Under the Hindu law a widow, though she takes as heir, takes a special and qualified estate. If there be collateral heirs of her husband she cannot of her own will alienate the property, except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last she must show necessity. The restrictions on her power of alienation are inseparable from her estate, and independent of the existence of heirs capable of taking on her death. If for want of heirs the property, so far as it has not been lawfully disposed of by her, passes to the Crown, the Crown has the same power of protecting its interest as an heir by impeaching any injurious alienation by the widow. The onus is on those who claim

HINDU LAW—WIDOW—continued.**2. POWER OF WIDOW—continued.****(b) POWER OF DISPOSITION OR ALIENATION—continued.****Power of alienation—continued.**

under an alienation from a Hindu widow to show that the transaction was within her limited powers. **COLLECTOR OF MASULIPATAM v. CAVALY VENKATA NARAINAPAH**

[2 W. R., P. C., 61; 8 Moore's L. A., 529]

28. ————— Power to dispose of property by will.—Right to dispose of.—A Hindu widow succeeding to the immoveable property of her deceased husband, and also claiming as heir to her only daughter, who died after her father childless and unmarried, is only entitled during her life to a widow's estate. The doctrine laid down in the original Court that ancestral property after partition can be disposed of by will, in the same way as self-acquired property, disapproved of, as opposed to the authorities and general spirit of Hindu law. **LAKSHMIBAI v. GANPAT MORABA. GUNPAT MORABA v. LAKSHMIBAI** . . . 5 Bom., O. C., 128

29. ————— Widow of Hindu having undivided property.—Self-acquired property.—Payment of debts.—The widow of an undivided Hindu has no right to sell his property for payment of his debts, even though it be self-acquired. **NAMASIVAYA CHETTI v. SIVAGAMI** . . . 1 Mad., 374

30. ————— Gift adverse to collateral heir of husband.—A childless widow Rani has no power to alienate her deceased husband's property as against his collateral heir by a wasecut-namah or deed of gift. **KNEBUT SINGH v. KOOLAHUL SINGH** . . . 5 W. R., P. C., 131
[2 Moore's L. A., 331]

31. ————— Power to dispose of immoveable property by will.—"Inherited."—A widow has no power to dispose by will of immoveable property inherited by her from her husband. The word "inherited" used in the Mitakshara, in regard to a woman's stridhan, does not include immoveable property so as to make it her *peculium*, but refers only to personal property over which alone she has absolute dominion. **GOBURDHUN NATH v. ONOOP ROY** . . . 3 W. R., 105

RAM SHEWUK ROY v. SHEO GOBIND SAHOO
[3 W. R., 519]

32. ————— Right to dispose of land, portion of stridhan.—Held that a widow cannot, under Hindu law, dispose of immoveable property given to her by her husband which has become a portion of her stridhan. **GUNPAT SINGH v. GUNGA PRESHAD** . . . 2 Agra, 230

33. ————— Right to alienate stridhan, except land.—A Hindu wife or widow may alienate her stridhan, whether it be moveable or immoveable, with the exception, perhaps, of lands given to her by her husband. **DON D. KULAMMAL v. KUPPU PILLAI** . . . 1 Mad., 85

HINDU LAW—WIDOW—continued.**2. POWER OF WIDOW—continued.****(b) POWER OF DISPOSITION OR ALIENATION—continued.****Power of alienation—continued.**

34. ————— Power to alienate land being her stridhanum.—Land received by a woman from her husband as stridhanum cannot be alienated even after the husband's death to the prejudice of the daughters as next heirs without their consent. **GANGADARAIYA v. PARAMESWARAMMA**

[5 Mad., 111]

35. ————— Power to dispose of property by will.—A woman cannot execute a will regarding any property she inherits from her husband or father. She may dispose of her stridhan by gift, will, or sale, unless it is immoveable property given her by her husband. **TEENGOOWREE CHATTERJEE v. DINONATH BANERJEE** . . . 3 W. R., 49

36. ————— Stridhan.—Power of disposition by will.—Where a Hindu lady had received presents of moveable property from her husband from time to time during their married life, and, after his death, partly out of such property and partly from funds raised by the mortgage of jewels admitted to be her stridhanum, purchased immoveable property,—Held that that was her stridhanum, and that she consequently could dispose of it by will. **VENKATA RAMA RAO v. VENKATA SURIYA RAO**

[I. L. R., 1 Mad., 281]

In the same case in the Privy Council it was held as follows, affirming the decision of the High Court. The testamentary power of a Hindu female over her stridhanum being commensurate with her power of disposition over it in her lifetime, and both being absolute, no distinction can be taken as regards a widow's power of disposition by will over immoveables in the purchase of which she has invested money given to her by her husband. Such estate is subject to the disposition which the general law gives her the power to make of her stridhanum. **VENKATA RAMA RAO v. VENKATA SURIYA RAO**

[I. L. R., 2 Mad., 333
3 C. L. R., 304]

37. ————— Right of alienation of moveable and immoveable property.—A Hindu widow's right to alienate moveable property inherited from her husband, without the consent of his heirs, is absolute. With respect to immoveable property inherited from her husband, a Hindu widow is little more than a tenant for life and trustee for the heirs of her husband, and she is restricted from alienating it by her sole independent act, unless for necessary subsistence, or for purposes beneficial to the deceased. **BECHAR BHAGAYAN v. BAI LAKSHMI**

[1 Bom., 56]

38. ————— Right of alienation of immoveable property.—Held that a Hindu widow having a life-interest only in immoveable property inherited from her husband, has an independent power of sale over the same to the extent of such life-interest and no further. **MAYARAM BHAIKRAM v. MOTIRAM GOVINDRAM**

[2 Bom., 331; 2nd Ed., 313]

HINDU LAW—WIDOW—continued.**2. POWER OF WIDOW—continued.****(b) POWER OF DISPOSITION OR ALIENATION—continued.****Power of alienation—continued.**

39. ——— *Power of, to dispose of personality inherited by her from her husband.*—*Held* that, under the Hindu law, as understood in the Benares school, a widow has an absolute right to dispose of the personality inherited by her from her husband; that under the Hindu law Government promissory notes ought to be treated as personal property; that jewels, shawls, &c., are of the nature of stridhan; and that in Hindu law books the word "corrody" is used solely with reference to land, and that Government promissory notes cannot be included in the said term "corrody." **DOORGA DAYEE v. POORUN DAYEE**

[1 Ind. Jur., N. S., 128; 5 W. R., 141]

40. ——— *Power to dispose of property.—Immovable and moveable property.*—By the law of the Western schools, as well as by the law of Bengal, a Hindu widow is restricted from alienating any immovable property which she has inherited from her husband. *Quere*,—Is there any distinction in respect of moveable property? **THAKOOR DEYSEE v. BAI BALUK RAM**

[2 Ind. Jur., N. S., 106; 10 W. R., P. C., 3
11 Moore's I. A., 139]

KOTABASAPA v. CHANVEROVA . 10 Bom., 403

41. ——— *Widow's property in moveables left to her by the will of her husband.*—In Western India a widow takes absolutely all moveable property bequeathed to her by her husband, and may dispose of such property by will. **DAMODAR MADHOWJI v. PURMANANDAS JEEWANDAS**

[I. L. R., 7 Bom., 155]

42. ——— *Widow's estate.—Moveable property.*—The restriction placed by the Hindu law on a widow's power of alienation of her husband's estate extends to moveable as well as immovable property. **NARASIMAH v. VENKATADRI**

[I. L. R., 8 Mad., 290]

43. ——— *Right of childless widow to alienate moveable property.—Mithila law.—Inheritance.*—Under the Mithila law a childless Hindu widow, although she cannot alienate the immovable property, has an absolute right over the moveable property inherited from her husband, and can alienate it in any manner she pleases, and she has also an absolute power to dispose of the profits of the estate during her lifetime. **BIRAJUN KORE v. LUOHMI NARAIN MAHATA**

[I. L. R., 10 Cal., 392]

44. ——— *Immovable property.—Will.—Bequest.—Gift.*—An absolute bequest by a Hindu of his separate immovable property to his widow confers on her as full dominion and power of alienation over that property as if the bequest had been made to a stranger. **SETH MULCHAND BADERASHA v. BAI MANCHA** . I. L. R., 7 Bom., 491

HINDU LAW—WIDOW—continued.**2. POWER OF WIDOW—continued.****(b) POWER OF DISPOSITION OR ALIENATION—continued.****Power of alienation—continued.**

45. ——— *Power to dispose of property by will.*—Where a widow of a Hindu who had received a share of the estate of her husband, consisting of moveable and immovable property, from her co-widows, purported to dispose of her property by will to the prejudice of the co-widows,—*Held* that the alienation was invalid. **GURUVI REDDI v. CHINNAMMA** . I. L. R., 7 Mad., 93

46. ——— *Grant of money in lieu of maintenance.—Power of disposal.*—Where a sum of money was given to a widow, without restriction, in lieu of maintenance, by her deceased husband's family,—*Held* that it became absolutely hers, and that she could dispose by will of landed property acquired by means of it. **NELLAIKUMARU CHETTI v. MARAKATHAMMAL** . I. L. R., 1 Mad., 168

47. ——— *Gift.—Interest with husband in joint property.*—Where a Hindu wife has a joint interest with her husband in landed properties, partly acquired by purchase, partly (as sowdayakam) by gift from her father,—*Held* that she was entitled on her husband's death to part with her interest in those properties. **MADHAVARAYYA v. TIETHA SAMI** . I. L. R., 1 Mad., 307

48. ——— *Restriction on alienation.—Proof of legal necessity.*—The restrictions on a Hindu widow's power of alienation are inseparable from her estate. Their existence does not depend on that of heirs capable of taking on her death. The plaintiffs sued as purchasers of the equity of redemption from S., a Hindu widow, to redeem a mortgage effected by her husband B. The mortgage deed recited that a portion of the mortgaged land was held by B., not as owner, but as mortgagee from a third party. S. was alive when the suit was instituted, but she died after the settlement of issues. The plaintiff then filed a supplementary claim to succeed as B.'s next heir. The defendants (the sons of the mortgagee) contended that the plaintiff could not redeem, because the sale by S. was invalid. They also claimed compensation for loss of the rents and profits of a portion of the mortgaged property redeemed from B. by the original owner. The Subordinate Judge allowed the plaintiff's claim. In appeal, the District Judge confirmed his decree, being of opinion that the sale was valid as against the defendants, because there were no collateral heirs. On appeal to the High Court,—*Held*, following the decision of the Privy Council in *Collector of Marulipatam v. Cavalry Venkatsu Narrainapah*, 2 W. R., P. C., 61; 8 Moore's I. A., 529, that the plaintiffs, who were bound to make out their title, could not succeed on the strength of an alienation by a Hindu widow, unless they proved that the alienation was made for purposes which the Hindu law recognised as necessary. **DEHONDO RAMOHANDRA v. BALAKRISHNA GOVIND NAGVEKAR** . I. L. R., 8 Bom., 190

HINDU LAW—WIDOW—continued.**2. POWER OF WIDOW—continued.****(b) POWER OF DISPOSITION OR ALIENATION—continued.****Power of alienation—continued.**

49. ———— *Adoption made on promise of settlement by adoptive father on adopted son.—Specific performance, Right to.—Alienation by widow in accordance with promise.—Limitation.—Immoveable property.*—Where a member of the Talabda Koli caste of Hindus, by an express promise to settle his property upon the boy, induced the parents of the defendant to give him their son in adoption, but died without having executed such settlement,—*Held* that the equity to compel the heir and legal representative of the adoptive father specifically to perform his contract survived; and the property in the hands of his widow was bound by that contract. Therefore, when the widow of the adoptive father, nearly thirty years after his death, gave effect to his undertaking by executing a deed of gift of his property in her hands in favour of the adopted son,—*Held* that such alienation was valid as against the next heir by blood of the adoptive father, and he could not, on the death of the widow, avail himself of the plea of limitation which she had waived. The nature of a Hindu widow's estate in immoveable property considered. *BHALA NAHANA v. PARBHU HARI* **I. L. R., 2 Bom., 67**

50. ———— *Right of widow to dispose by will.*—By Hindu law the widow of a collateral does not take an absolute estate in the property of her husband's gotraja sapinda, which she can dispose of by will after her death. *BHARMAN-GAYDA v. RUDRAPGAYDA* . **I. L. R., 4 Bom., 181**

51. ———— *Bengal school of Hindu law.—Widow's estate.—Joint widows.—Partition.—Purchaser from Hindu widow.*—Where a Hindu governed by the Bengal school of Hindu law dies intestate, leaving two widows, his only heirs, him surviving, either of those widows may sell her interest in her deceased husband's property, and the purchaser thereof is entitled to enforce a partition as against the other widow. *JANAKI NATH MUKHOPADHYA v. MOTHURANATH MUKHOPADHYA* [**I. L. R., 9 Calc., 580; 12 C. L. R., 215**]

52. ———— *Widow with certificate under Act XXVII of 1860.—Ground for setting aside sale.—Fraud.*—The sale by a widow (who has obtained a certificate under Act XXVII of 1860 to collect the debts due to her husband's estate) of a money-decree belonging to her husband's estate, cannot be set aside except on the ground of fraud, either as not being the heir and selling what she had no power to transfer, or as making a paper transfer to avoid the effect of execution. *BHAGWAN DOSS v. LUCHMEER NARAIN* [**2 W. R., Mis., 19**]

53. ———— *Sale by widow with consent of heirs.*—An adopted son is not actually precluded from questioning acts done by his mother during his minority or before his adoption;

HINDU LAW—WIDOW—continued.**2. POWER OF WIDOW—continued.****(b) POWER OF DISPOSITION OR ALIENATION—continued.****Power of alienation—continued.**

but a sale by a widow, with the consent of all legal heirs at the time existing, and ratified by decrees of Court, is binding on reversionary heirs as well as on an adopted son adopted long after the sale. *RAJ-KRISTO ROY v. KISHOREE MORUN MOJOMDAR* [**3 W. R., 14**]

54. ———— *Power to defeat rights of reversioners.*—A Hindu widow is not at liberty to defeat the rights of reversioners by alienating or wasting moveable property inherited from her husband. *BUCHI RAMAYYA v. JAGAPATHI* [**I. L. R., 8 Mad., 304**]

55. ———— *Forfeiture of property.—Reversioner, Right of, to possession.*—A Hindu widow does not forfeit her interest in her deceased husband's separate estate merely by divesting herself of such interest. Such an act does not entitle the person claiming to be the next reversioner to sue for possession of the estate, or for a declaration of his right as such reversioner to succeed to the estate after the widow's death. *PRAG DAS v. HARI KISHEN* [**I. L. R., 1 All., 503**]

56. ———— *Appointment of reversioner as manager.—Lease by Hindu widow before he took over charge.*—Where a reversioner had obtained a decree for waste against a Hindu widow and was appointed manager of the estate, but did not take over charge of it for six years,—*Held*, a pottah granted by the widow in the meantime was a valid lease. *RAJ CHURN PAUL v. SAROOP CHUNDER MYTEN* **9 W. R., 598**

57. ———— *Right of purchaser at sale in execution of decree.*—A purchaser in execution of the rights of a Hindu widow is entitled to question the validity of leases made by her. *RAJKISHEN SINGAR v. CHOWDREY JAKHMOORUL HUQ* **W. R., 1864, 351**

3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

58. ———— *Effect of decree against Hindu widow.—How far binding on inheritance.*—The same principle which has prevailed in England as to tenants-in-tail representing the inheritance, would seem to apply to the case of a Hindu widow; as there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow. A decree in a suit for a zemindari by a Hindu widow binds those claiming the zemindari in succession to her, unless it can be impeached on some special ground. *KATTAMA NAVCHER v. RAJAH OF SHIVAGUNGA* . **2 W. R., P. C., 31** [**9 Moore's I. A., 539**]

BADAMOO KOOR v. WUZNEER SINGH [**1 Ind. Jur., N. S., 144; 5 W. R., 78**]

HINDU LAW—WIDOW—continued.**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Effect of decree against Hindu widow—continued.****GOPAUL CHUNDER MAMA v. GOUR MOHUN DOSSEE**
[6 W. R., 52]**See PREETAB NARAIN SINGH v. TRILOKINATH SINGH**
[L. L. R., 11 Calo., 186; L. R., 11 I. A., 197]

59. ——— Decree against widow in representative capacity.—*Execution of decrees.—Debts incurred by husband.*—After the death of a member of a Hindu family his widows were sued in their representative capacity, and decrees were obtained in respect of debts incurred by him in his lifetime on his own account. *Held* that the decrees could only be executed against that property which passed from the deceased to his widows in their own right, and not against other portions of the joint family property. **SADABURT PERSHAD SAHOO v. LOTY ALI KHAN. PHOOLBAS KOOR v. LALL JUGGESSUR SAHI. BIKRAMJEET LALL v. PHOOLBAS KOOR. RAMDHYAN KOOR v. PHOOLBAS KOOR** 14 W. R., 340

60. ——— Under a decree in a suit on a bond against the widow of the deceased obligor, property to which her son, of whom she was guardian, was entitled as heir, was sold. In the advertisement of the sale the property was described as that of the widow, and the interest to be sold was described as that of the debtor. *Held* that the purchaser at the sale acquired the property of the deceased debtor in the estate, and had a good title against the heir. **ISHAN CHUNDER MITTER v. BUKSH ALI SOUDAGUR** **Marsh., 614**

S. C. BUKSH ALI SOUDAGUR v. ESSAN CHUNDER MITTER **W. R., F. R., 119****NUZHERUN v. AMERROODREN** **24 W. R., 3****HULKHORY LALL v. SHEO CHURN LALL**
[24 W. R., 109]**See ABDUL KUREEM v. JAUN ALI**
[18 W. R., 56]

61. ——— Decree against widow for arrears of revenue.—*Sale in execution of widow's interest.—Purchaser, Rights of.—Reversioner.*—The immoveable property of a Hindu widow was sold under a decree against her, and A. was the purchaser at the sale. Afterwards and during the lifetime of the widow the lands in question were sold for arrears of revenue due by A. to Government in respect of other lands, and B. was the purchaser at the sale. After the death of the widow the reversioner sued B. for recovery of possession of the lands. *Held* that the life-estate of the widow was alone acquired by the purchaser at the sale under the decree, and sold at the sale for arrears of Government revenue, and that interest having expired the reversioner was entitled to recover the possession of the lands. **DOORGA CHURN v. KASSY CHURN MOITREY**
[**Marsh., 599; 2 Hay, 646**]

HINDU LAW—WIDOW—continued.**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Decree against widow for arrears of revenue—continued.****KISTO MOYEE DOSSEE v. PRASUNNO NARAIN CHOWDERY** **6 W. R., 304****RAM SHEWUK ROY v. SHEO GOBIND SAHOO**
[8 W. R., 519]

62. ——— Decree against widow personally and as guardian of son.—*Debts of husband and wife jointly, Liability of estate for.*—Where a decree is obtained against a Hindu widow, as guardian of her son, as well as in her own right, for a debt contracted jointly by her and her husband, the husband's property is liable to satisfy the whole decree; and the wife is therefore entitled to sell as much of the estate as is necessary to raise the full amount of the debt. **GOLUCK CHUNDER PAUL v. MAHOMED ROHIM** **9 W. R., 316**

63. ——— Decree for refund of deposit by mortgagee to prevent sale for arrears of revenue.—*Estate in possession of Hindu widow.—Effect of decree by mortgagee against widow.*—A mortgaged estate, which was about to be sold for arrears of Government revenue, was saved from sale by the mortgagee depositing a sum sufficient to pay the revenue due. The mortgagee then sued the person in possession of the talook, a Hindu lady, widow of the original mortgagor, seeking, under section 9 of Act I of 1846, to obtain from her, personally, repayment of the money paid to save the estate from sale; not making the reversioners parties, and not praying that the talook might be sold to pay the amount due. A decree was given in that suit to the mortgagee, on the execution of which decree the reversioners intervened. *Held*, by the Privy Council, that the mortgagee had no charge on the estate, and was not entitled to have it sold to pay the amount due: the action so brought was only a personal action and the decree gave no remedy against the land; and it was intimated that this ruling did not affect the general doctrine that, in a suit brought by a third person, the object of which is to recover, or to charge an estate of which a Hindu widow is the proprietress, she will, as defendant, represent and protect the estate as well in respect of her own as of the reversionary interest. **NAGENDRA CHUNDER GHOSH v. SREEMUTTY DOSSEE**
[8 W. R., P. C., 17; 11 Moore's L. A., 241]

64. ——— Decree in suit for arrears of rent.—*Decree against widow in representative capacity.—Purchaser, Rights of.*—A. sued, under Act X of 1859, the widow of Z., as widow of Z. and guardian of Z.'s son, for arrears of rent due by Z. He obtained a decree in 1862 against the widow as Z.'s representative, but it was declared that Z.'s son was not liable, on the ground that he had been adopted into another family. In a regular suit, A. obtained a decree declaring Z.'s son to be the heir of his natural father Z. Certain estates of the deceased were then, in 1867, put up for sale under Act XI of 1859, in execution of A.'s decree for rent, and A. became the pur-

HINDU LAW—WIDOW—continued.**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Decree in suit for arrears of rent—continued.**

chaser. The certificate stated that the sale was of the right and interest of the widow, and that it took place under the decree in the regular suit. *B.*, the holder of a prior decree for rent against *Z.*, having failed to obtain execution against the same property, then sued *A.* and *Z.*'s son for a declaration that he was entitled to sell the property on the ground that it had come to *Z.*'s son as *Z.*'s heir, and that only the interest of the widow (who had no interest) had been purchased by *A.* *Held* (reversing the decision of the High Court), *A.* was entitled to the property. The case of *Ishan Chunder Mitter v. Bakesh Ali Soudagur, Marsh.*, 614, approved of. **COURT OF WARDS (GENERAL MANAGER OF DARBHANGA RAJ) v. COOMAR RAMAPUT SINGH**

[10 B. L. R., 294; 17 W. R., 459
14 Moore's L. A., 605]

65. ——— Personal decree against widow.—Rent accruing after husband's death.—In execution of a decree in a suit under the provisions of Regulation VIII of 1831 against a Hindu widow for arrears of rent of a certain talook, the interest of the widow in another talook was sold in 1852 under Act IV of 1846; and in execution of another decree on a bond given by the widow for arrears of rent, a third talook was sold in 1865. Both decrees were for arrears of rent which had accrued due after the death of the husband; and the suits were brought against the widow alone, the reversioner not being made a party. In a suit by the purchaser of the talooks from the reversioner against the purchasers at the execution-sales to recover possession of the talooks, *Held* that the plaintiff was entitled to recover. The decrees for arrears of rent were a personal debt of the widow, and not a debt against the estate of the deceased husband. Such decrees can be enforced by the sale of her interest only, except where the proceeding is one which authorises the sale of the tenures under Bengal Act VIII of 1869. Even assuming them to be a charge on the husband's estate, the onus was on the defendants to prove that such charge was created by legal necessity, which they had failed to do. **MOHIMA CHUNDER ROY CHOWDHRY v. RAM KISHORE ACHARJEE CHOWDHRY**

[15 B. L. R., 142; 23 W. R., 174]

66. ——— Widow in possession of husband's property.—Personal debt.—Right of purchaser.—Arrears of rent due to a zemindar by a Hindu widow in possession of her husband's property are not a personal debt of the widow, and on a sale of the property taking place in execution of a decree against the widow for such arrears, in a suit under Act X of 1859, the purchaser acquires the property absolutely and not merely the rights of the widow. **TELUCK CHUNDER CHUCKERBUTTY v. MUDDON MOHUN JOGGER**

[15 B. L. R., 143, note; 12 W. R., 504]

HINDU LAW—WIDOW—continued.**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Decree in suit for arrears of rent—continued.**

ANUND MOYEE DASSEE v. MOHINDEO NARAIN DASSEE 15 W. R., 264

CHOWDHRY ZUHOORUL HUQ v. GOOROO CHURN ROY 15 W. R., 329

RAJARAM BANERJEE v. SONATUN ROY
[23 W. R., 404]

67. ——— Decree executed against widow of mortgagor.—"Razinama decrees."—Right of purchaser.—Razinama arrangements, not made decrees of Court but irregularly acted upon as if they had been so made, do not substantiate advances alleged to have been made by creditors; but, assuming such "razinamah decrees" to substantiate creditor's claims, proceedings in execution against the widow of the mortgagor alone as his representative cannot be effectual to pass to the purchaser of the equity of redemption at a sale in the course of such proceedings any right or interest in the property mortgaged. **PAREYASAMI alias KOTTAI TEVAR v. SALUOKAI TEVAR alias OTTA TEVAR**

[8 Mad., 157]

See, however, the same case on appeal to Privy Council. **SIVAGNANA TEVAR v. PAREYASAMI**

[1 L. R., 1 Mad., 312]

L. R., 5 L. A., 61

RAMASAMI CHETTI v. SALUOKAI TEVAR alias OTTA TEVAR 8 Mad., 186

68. ——— Execution of decree against widow as representing estate.—Sale in execution of decree.—Widow's interest under deed of adoption.—Right of purchaser against adopted son.—The plaintiff sued to follow into the hands of the defendant certain property to which the latter had by transfers acquired the title of the purchaser at an auction-sale held in June 1843. The ground of his claim was that the late owner, who died before the sale, had left his widow a permission to adopt a son, and thereupon in 1856 she had adopted the plaintiff. His contention was that the sale was of the widow's interest merely, the permission to adopt having given to her, in the event of an adoption, a life-interest in the property, and that, upon her death in 1865, his interest accrued. *Held* that, as the proceeds of the execution-sale were not applied to satisfy only a liability incurred after the owner's death, but also decrees for other debts, for which the estate was liable, there was no substantial ground to impeach the long title acquired by the respondent. **DESENDO NARAIN ROY v. COOMAR CHUNDERNATH ROY**

[20 W. R., 30]

69. ——— Execution of decree against widow for arrears of maintenance.—Sale of right, title, and interest of widow.—Maintenance of widow.—Charge on estate of husband.—A Hindu died, leaving two sons, *S.* and *M.*, who became separate in estate. *S.* died, leaving a son, *K.*, who

HINDU LAW—WIDOW—continued.**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Execution of decree against widow for arrears of maintenance—continued.**

became a lunatic. *M.* died leaving a widow, *N.*, and two sons, *B.* and *C.*; and on his death, his sons *B.* and *C.* took possession of their father's estate, and entered into an agreement with their mother, *N.*, to pay her Rs 200 per annum for maintenance, and hypothecated some villages as security for due payment. *B.* died, and *C.* remained in exclusive possession of the property. After the death of *C.*, his widow, *R.* and *D.*, and afterwards *D.* alone, took possession of the estate. *N.* sued *D.* for arrears of maintenance accrued since the death of *C.*, and obtained a decree. In execution of that decree, she attached the rights and interests of *D.* in certain properties, but she died before any sale took place. The plaintiff, the son of *K.*, then obtained a certificate under Act XXVII of 1860 as representative of *N.* He was appointed a guardian of *K.*, who was, in a suit brought by him before his insanity and before the death of *N.*, declared, by a decree made in 1848, entitled to the estate of *C.* as reversioner. The plaintiff executed the decree obtained by *N.*, and caused the properties, which had been before attached, to be sold in 1866. Some time after *D.* died, and the plaintiff then sued the purchaser to recover possession of the property as the representative of his father under the decree of 1848, but was defeated on the ground set up by the defendants, the purchasers, that his father was no longer heir to *C.*, by reason of supervenient insanity when the succession opened out to him on the death of *N.* The plaintiff then brought this suit to establish his own title to the property as heir of *C.* It was contended by the defendants, among other things, that, by the sale in execution in 1866, under the decree obtained by *N.* against *D.*, the absolute proprietary title passed, and not the life-interest of the widow only. *Held* that the arrears of maintenance for which the sale in 1866 took place was the personal debt of *D.*, and that nothing but her life-interest passed under the sale. *BAIJUN DOOBAY v. BRIJ BHOOKUN LALL AWUSTI v. MAHADRO DOOBAY*

[15 B. L. R., 145, note : 17 W. R., 422]

Held on appeal to the Privy Council, affirming the decision of the High Court, that the purchaser at the execution-sale took only the widow's interest, and not the absolute estate, and therefore the plaintiff was entitled to recover. *BAIJUN DOOBAY v. BRIJ BHOOKUN LALL AWUSTI*

[I. L. R., 1 Cal., 133 : 24 W. R., 306
L. R., 2 I. A., 275]

70. — Decree in form personal against widow.—Sale in execution of decree.—Right of purchaser.—Where an estate is sold in execution of a decree which in form is a personal decree against a widow, and the sale certificate purports to pass only the right, title, and interest of such widow, the purchasers at such sale cannot, in a suit by the reversionary heirs of the husband for possession of the property, give evidence to show that the debt for

HINDU LAW—WIDOW—continued.**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Decree in form personal against widow—continued.**

which the property was sold was chargeable on the estate of the deceased husband, with a view to establishing a right to more than the widow's interest. *BAIJUN DOOBAY v. BRIJ BHOOKUN LALL AWUSTI*, I. R., 2 I. A., 275 : I. L. R., 1 Cal., 133 : 24 W. R., 306, cited.—*RADHA MOHUN MUNDUL v. SHOSH! BHOSUN BISWAS* . . . 3 C. L. R., 530

71. — Sale in execution of mortgage decree against widow.—Right of purchaser.—Son's widow.—A Hindu having mortgaged family property died, leaving a widow and a son him surviving. The son died leaving a widow, the defendant. The mortgagee then sued the widow of the father, as his representative, and the property was sold, and bought by the plaintiff in execution of the decree obtained against her. The plaintiff having been dispossessed by the defendant sued to recover the land. *Held* that the defendant was not bound by the decree or sale, and that the plaintiff was not entitled to recover. *General Manager of the Durbhanga Raj v. Coomar Ramaput Singh*, 14 Moore's I. A., 605, distinguished. *SIVA BHAGIAM v. PALANI PADIACHI* [I. L. R., 4 Mad., 401]

72. — Sale of right, title, and interest of widow.—A money-decree having been passed against *R.*, a Hindu, was executed against his widow, whose right, title, and interest in certain property as representative of her deceased husband was sold by the Court. *Held* that, on the death of the widow, *R.*'s daughter and heir was not entitled to recover from the purchaser the property sold. *General Manager of the Durbhanga Raj v. Coomar Ramaput Singh*, 14 Moore's I. A., 605; and *Ishan Chunder Mitter v. Buteh Ali Soudagar*, Marsh., 614, followed. *VIDYANATHAYAN v. MINAKSHI AMMAL* . . . I. L. R., 5 Mad., 5

73. — Decree against widow on bond.—Sale of right, title, and interest of widow in execution of decree.—Purchaser of right, title, and interest, Rights of.—In 1854 *A. R.* executed a bond in favour of *K.* by way of security for a loan, and, in a suit against *A.* (the widow of *A. R.*), *K.* obtained a decree on the bond on the 24th of December 1859, in execution of which a share in a jalkar, which had belonged to *A. R.*, was put up for sale and purchased by *K.* At the time of sale the property sold was in the possession of *A.*, on behalf of the two sons of herself and *A. R.*, who were minors. On the death of the two minor sons, unmarried and without issue, *A.* took possession of the property as their heir. In the decree of the 24th of December 1859 *A.* was described as widow of *A. R.*, and mother of the two minor sons. Neither the sale-proclamation nor certificate of sale was produced, but a purwannah from the Munsif to the Nazir was put in evidence, which referred to the sale-proclamation, and in which the parties were described merely as "decree-holder" and "judgment-debtor;" this purwannah

HINDU LAW—WIDOW—continued.**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Decree against widow on bond—continued.**

also contained a schedule of the property intended to be sold, in which the interest was the "right and possession of the debtor" in the share of the jalkar. In a suit brought by the representatives of *K.* to obtain possession of the property purchased by *K.* at the sale in execution of his decree,—*Held* that *K.* did not, by his purchase, acquire the interest of the minor sons in the property sold, and that the plaintiffs were, therefore, not entitled to succeed. *ALUKMONKE DABHE v. BANKE MADHAR CHUCKERBUTTY*

[I. L. R., 4 Calo., 677: 3 C. L. R., 473]

74. ——— Execution of decree against representatives of widow.—Civil Procedure Code, 1877, s. 234.—A Hindu widow instituted a suit to recover possession of certain property belonging to her deceased husband, and that suit was dismissed with costs. The widow having died before execution for the costs was taken out, the decree-holder sought to take out execution against the next heirs of the late widow's deceased husband. *Held* that the fact that the widow did not in her suit seek to recover any interest personal to herself, but that she contracted the judgment-debt in the effort to recover a portion of her husband's estate, to which in its entirety the next heirs of her late husband had succeeded, was sufficient to make the whole estate liable, and would entitle the decree-holder to satisfy his decree against "the legal representative" of the late widow's husband, under section 234 of Act X of 1877. *Mohima Chunder Roy Chowdhry v. Ram Kishore Acharyes Chowdhry*, 15 B. L. R., 142, distinguished. In a decree against a Hindu widow, it should be stated whether the decree is a personal decree, or one against her as representing her deceased husband. *RAMKISHORE CHUCKERBUTTY v. KALLYKANTO CHUCKERBUTTY*

[I. L. R., 3 Calo., 479: 3 C. L. R., 1]

75. ——— Sale of right, title, and interest of Hindu widow.—Estate taken by purchaser.—The test to be applied in order to determine the exact interest which passes at a sale under the words "right, title, and interest" of a Hindu widow in any properties, depends upon the question whether the suit in which the sale was directed was one brought against the widow upon a cause of action personal to herself, or one which affects the whole inheritance of the property in suit. *Baijun Doobey v. Brij Bhokun Lall Awasti*, L. R., 2 I. A., 275, followed. *JOTENDRO MOHUN TAGORE v. JOGUL KISHORE*

[I. L. R., 7 Calo., 357: 9 C. L. R., 57]

Held, on appeal to the Privy Council, affirming the decree of the High Court,—Although a Hindu widow has, for some purposes, only a partial or qualified right, title, and interest in the estate which was her husband's, yet for other purposes she represents an absolute interest therein. The question whether, on the sale of the right, title, and interest of the widow in execution of a decree, the whole interest or in-

HINDU LAW—WIDOW—continued.**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Sale of right, title, and interest of Hindu widow—continued.**

heritance in the family estate does or does not pass, depends on the nature of the suit in which the execution of the decree takes place. If the suit is a personal claim against the widow, then merely the widow's limited estate is sold. If, on the other hand, the suit is against the widow in respect of the family estate, or upon a cause not merely personal against her, then the whole of the inheritance passes by the execution-sale. The judgment which the decree has followed may be examined in order to determine which of these two results attends the execution-sale of the widow's right, title, and interest. The principle in *Baijun Doobey v. Brij Bhokun Lall Awasti*, I. L. R., 2 Calo., 188, referred to and applied. *JUGUL KISHORE v. JOTENDRO MOHUN TAGORE*

[I. L. R., 10 Calo., 985: L. R., 11 I. A., 63]

JYKISHOON SOOKUL v. SHUNKUR SOOKUL

[3 Agra, 168]

76. ——— Decree against widow how far binding on minor son.—Parties.—Representation.—Sale of equity of redemption.—Mortgage.—Redemption.—A widow does not represent the estate so as to bind the son when the existence of the minor son is, from whatever cause, altogether ignored, and there is nothing on the face of the proceedings to show that she is sued as representing the minor son. Accordingly, where the plaintiff, a minor, sought to redeem a certain property from the defendant, who had purchased the equity of redemption at an auction-sale, in execution of a decree obtained against the plaintiff's mother alone as representative of her deceased husband,—*Held* that the plaintiff was entitled to redeem. The plaintiff having been ignored, the inheritance had not been substantially represented in the suit against his mother alone, and the plaintiff's right to the equity of redemption consequently remained unaffected by the sale to the defendant. *AKORA DADA v. SAKHARAM*

[I. L. R., 9 Bom, 429]

77. ——— Decree against widow as heir of husband.—Effect of, against rever-sioners.—Res judicata.—Compromise by widow.—A suit brought against *K.*, the widow of *E.*, a Hindu, by the representatives of *E.*'s brothers, *H.* and *P.*, for possession of his estate, ended in a compromise by which the defendant recognised the plaintiffs' rights, and conceded that the family was joint. After *K.*'s death, *M.*, a daughter of *E.*, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently, *S.*, *M.*'s son, who had been born after *K.*'s compromise, brought a suit against *M.* and the representatives of *H.* and *P.* to recover possession of the estate, on the allegation that the family being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by *K.* and the withdrawal of the former suit by *M.* were in fraud of his succession, and did not affect his rights. The

HINDU LAW—WIDOW—continued.**8. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—continued.****Decree against widow as heir of husband—continued.**

Court of first instance found that the plaintiff was entitled to succeed to the estate, but that, his mother being still alive, he was entitled to possession after her death only, and, upon these findings, gave him a decree declaring his right to possession on *M.*'s death. The lower Appellate Court reversed the decree, holding that the compromise entered into by *K.* was conclusive against the plaintiff's claim, and also that, during his mother's lifetime, he had no *locus standi* to maintain the suit. Also, that the rule whereby decrees obtained against a Hindu widow succeeding to her husband's estate as heir are binding by way of *res judicata* against all who in the order of succession come after her, and in that sense may be dealt with as her representatives, was limited to decrees fairly obtained against the widow in a contested and *bond fide* litigation, and would not apply to the compromise effected by *K.*, which could scarcely be regarded as on a higher footing than an alienation which the widow in possession of her husband's divided estate might have made, and which the plaintiff distinctly alleged had not been fairly obtained. *Anand Koor v. Court of Wards*, 1 L. R., 6 Cal., 764; *Nand Kumar v. Radha Kauri*, 1 L. R., 1 All., 282; and *Katama Natchiar's case*, 9 Moore's I. A., 542, referred to. Also, that *M.*'s withdrawal of her suit was not a bar to the suit of the plaintiff. *SANT KUMAR v. DEO SARAN*

[1 L. R., 8 All., 365]

See *SACHIT v. BUDHVA KUAR*

[1 L. R., 8 All., 429]

78. — Decree against widow.—Liability of reversioners for acts of widow.—Costs of suit for possession.—A Hindu, governed by the Bengal school of Hindu law, brought a suit for possession of a certain talook, but died before decree, leaving him surviving a widow and two daughters. The widow was substituted in the suit instead of her husband, and she obtained a decree for possession. By a summary order made in execution of the decree the widow was put in possession of the talook as well as of certain lands, which lands were claimed by a person not a party to the suit, as lands not belonging to the talook. The claimant afterwards brought a suit for these lands against the widow. The widow died during the suit, and was succeeded by her daughters, who also died after a decree for possession of the lands had been obtained by the claimant against them, when their sons were substituted in their stead as defendants. It appeared that the widow, the daughters, and the daughters' sons had all been in possession of the disputed lands as a portion of the family estate. Held that the reversioners, the daughters' sons, were liable as the legal representatives of the daughters, and as such were liable for all costs incurred in the suit brought by the claimant for possession of the disputed lands. *CHUNDER COOMAR ROY v. GONESH CHUNDER DASS*

[1 L. R., 13 Cal., 283]

HINDU LAW—WIDOW—continued.**4. DISQUALIFICATIONS.****(a) RE-MARRIAGE.**

79. — Effect of re-marriage.—Act XV of 1856, ss. 2, 3, 5—Inheritance.—A Hindu died leaving a widow and minor son and daughter. The widow re-married after her husband's estate had vested in her son. The son subsequently died, and his step-brother took possession of the property. The widow then brought a suit against the step-brother for possession. Held that the suit was maintainable, and that she could properly succeed as heir to her son, notwithstanding her second marriage. *AKORA SUTH v. BOREANI*

[2 B. L. R., A C., 199; 11 W. R., 82]

S. C. in lower Court. *OKHOORAH SOOT v. BHEDEA BARINEE* . . . 10 W. R., 34

80. — Maraver caste.—Forfeiture of property of first husband.—The Court, applying the principles of the Hindu law, held that a widow of the Maraver caste who has re-married has no claim to the property of her first husband. *MURUGAYI v. VIRAMAKALI* . . . 1 L. R., 1 Mad., 226

81. — Lingaits.—Custom in Wynaad.—Widow marriage.—Among the Lingait Goundans in the Wynaad, a widow, who contracts what is known as an odaveli marriage, ceases to inherit her deceased husband's estate. *KODUTHI v. MADU* . . . 1 L. R., 7 Mad., 321

82. — Maintenance.—Power to sell husband's estate for.—Where a Hindu widow is re-married, or is living with another man, it does not necessarily follow that she would not be entitled to sell her deceased husband's estate for her maintenance. *AMJAD ALI v. MONIRAM KALITA*

[1 L. R., 12 Cal., 52]

(b) UNCHASTITY.

83. — Application of Hindu texts as to females debarred from inheriting.—Widow.—Mother.—The texts which pronounce that Hindu females are debarred from inheriting are confined in their application to the widow as such. *KOTIYADU v. LAKSHMI* . . . 1 L. R., 5 Mad., 149

84. — Effect of unchastity.—Unchastity subsequent to descent of estate.—Divesting of property.—It is a general rule of Hindu law that when the descent of an estate has taken place before the cause of exclusion from caste has arisen, the estate is not divested by the owner becoming an outcast. This rule would not apply to a wife who has become unchaste. *DROKKE v. SOOKHDEO*

[2 N. W., 361]

85. — Forfeiture of inheritance.—Act XXI of 1880.—D., a Parsi Hindu residing at Nasik, died leaving two widows, *B.* and *P. B.*, who was the first wife, though not incontinent, had been turned out of his house by her husband some time after he married *P.* In a suit by *B.* to recover a moiety of *D.*'s estate, *P.*, while admitting

HINDU LAW—WIDOW—continued.**4. DISQUALIFICATIONS—continued.****(b) UNCHASTITY—continued.****Effect of unchastity—continued.**

that she herself had been leading a life of prostitution since *D.*'s death, resisted a partition of his estate, on the grounds that *B.* had, since *D.*'s death, cohabited with *M.*, and subsequently married *E.*, both of which allegations *B.* denied. *Held* that, though by Hindu law, incontinence excluded a widow from succession to her husband's estate, yet if the inheritance were once vested it was not liable to be divested, unless her subsequent incontinence were accompanied by degradation; but that, by Act XXI of 1860, deprivation of caste can no longer be recognised as working a forfeiture of any right or property, or affecting any right of inheritance. *PARVATI v. BHIRKE*

[4 Bom., A. C., 25

86. ————— *Divesting of property.—Forfeiture of inheritance.*—Unchastity in a Hindu widow does not divest her of property which has become vested in her after the death of her husband. *ABHIRAM DOSS v. SREERAM DOSS*

[3 B. L. R., A. C., 421; 12 W. R., 336

87. ————— *Divesting of property.—Forfeiture of inheritance.—Act XXI of 1860.*—A Hindu widow, in whom the property of her husband has once vested, does not forfeit by her unchastity her right to such property. *Semble*,—Unchastity, followed by degradation or expulsion from caste, would not be sufficient to deprive a widow of an estate which she has taken by inheritance. *MATANGINI DEBI v. JAYKALI DEBI*

[5 B. L. R., 466; 14 W. R., O. C., 23

88. ————— *Widow's estate, Forfeiture of.—Unchastity during widowhood.—Divesting of property.*—*Held* (KEMP, GLOVER, and MITTER, JJ., dissenting), under the Hindu law as administered in the Bengal school, a widow, who has once inherited the estate of her husband, is not liable to forfeit that estate by reason of her subsequent unchastity. *Per* KEMP, GLOVER, and MITTER, JJ., *contra*. *KERY KOLITANY v. MONERAM KOLITA*

[13 B. L. R., F. B., 1; 19 W. R., 367

Held in the same case on appeal to the Privy Council.—It has not been established that the estate of a widow forms an exception to the general rule that the estate of a Hindu once vested by succession, or inheritance, is not divested by any act or incapacity which before succession would have formed a ground for exclusion from inheritance. The general rule is stated in the Viramitrodaya, Chapter VIII, "On exclusion from inheritance," paragraphs 3, 4, and 5. This work, like the Mitakshara, may be referred to in Bengal in cases in regard to which the Dayabhaga is silent. A widow who, not having been degraded or deprived of caste, had inherited the estate of her deceased husband,—*Held* not liable to forfeit that estate by reason of subsequent acts of unchastity. *Quare*,—As to the effect of her being degraded or deprived of caste for unchastity. *MONERAM KOLITA v. KERY KOLITANY*

[I. L. R., 5 Cal., 776; 6 C. L. R., 322
L. R., 7 I. A., 115**HINDU LAW—WIDOW—continued.****4. DISQUALIFICATIONS—continued.****(b) UNCHASTITY—continued.****Effect of unchastity—continued.**

89. ————— *Widow's estate, Forfeiture of.—Unchastity during widowhood.*—*Held*, under the Mitakshara law, that a widow, who has once inherited the estate of her husband, is not liable to forfeit that estate by reason of her subsequent unchastity. The ruling of the majority of the Full Bench of the Calcutta High Court in *Kery Kolitany v. Moneram Kolita*, 13 B. L. R., 1, followed. *NEHALO v. KISHEN LAL* . I. L. R., 2 All., 150

90. ————— *Widow's estate, Forfeiture of.—Unchastity during widowhood.*—It is sufficient for the protection of a Hindu widow's right to her husband's estate from forfeiture by reason of unchastity that such right has vested in her before her misconduct. It is not necessary for such protection that she should have acquired possession of the estate before her misconduct. *BHAWANI v. MAHTAB KUAR* I. L. R., 2 All., 171

91. ————— *Proof of incontinence.—Suspicion.*—Infidelity in a wife, or incontinence in a widow, in order to constitute a disqualification to inherit, must be positively proved, or at any rate there must be a reasonably well-grounded suspicion of it having taken place. But, *quare*, as to anything less than positive proof being sufficient. *RAMIA v. BRAGI* 1 Bom., 66

S. C. IN THE GOODS OF DADOO MANIA

[1 Ind. Jur., O. S., 59

92. ————— *Adoption, Right to make.*—A Hindu widow, who has become unchaste, is living in concubinage, and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption. *SAYAMLALL DUTT v. SAUDAMINI DAS* 5 B. L. R., 362

93. ————— *Adoption by mother-in-law.—Subsequent adoption by daughter-in-law.—Unchastity of widow after vesting of estate, Effect of, on power of adoption.—Suit to set aside adoption.*—One *G.* died, leaving him surviving his widow *Y.* and his undivided son *E.*, who subsequently also died, leaving him surviving his widow *P.* and a son *V.*, who died shortly afterwards. *Y.* adopted the plaintiff, and immediately afterwards *P.* adopted the defendant. The plaintiff sought to set aside the adoption of the defendant, alleging that it was invalid, inasmuch as it took place subsequently to his own adoption, and because of *P.* being an unchaste widow. *Held* that the adoption of the plaintiff was invalid. After the death of *E.* his estate vested in his widow *P.*, the adoptive mother of the defendant. Her existence and the vesting in her of her husband's estate rendered the elder widow *Y.* incapable of adopting. The estate having thus vested in *P.* would not be divested by her subsequent unchastity, and, therefore, the enquiry into her chastity was irrelevant. *KESHAV RAMKRISHNA v. GOVIND GANESH*

[I. L. R., 9 Bom., 94

HINDU LAW—WIDOW—continued.**4. DISQUALIFICATIONS—continued.****(b) UNCHASTITY—continued.****Effect of unchastity—continued.**

94. ———— Liability of decree for maintenance to be set aside or suspended.—A decree obtained by a Hindu widow declaring her right to maintenance is liable to be set aside or suspended in its operation on proof of subsequent unchastity given by her husband's relatives either in a suit brought by them expressly for the purpose of setting aside the decree, or in answer to the widow's suit to enforce her right. *VISHNU SHAMBHOG v. MANJAMMA* . . . **I. L. R., 9 Bom., 108**

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See CASES UNDER WILL.

1. POWER OF DISPOSITION.**(a) GENERALLY.**

1. ———— Power to make will.—Origin and extent of power.—*Per NORMAN, J.*—The power of a Hindu to make a will is not of modern introduc-

HINDU LAW—WILL—continued.**1. POWER OF DISPOSITION—continued.****(a) GENERALLY—continued.****Power to make will—continued.**

tion, nor is it of local origin. Wills were known to and in use amongst Hindus not in the presidency towns only, but from one end of the peninsula to the other. The right to make a will is part of the Hindu law itself. The extent and nature of the disposition which a Hindu testator is capable of making is not a question of public expediency or of custom or usage, but must be regulated by rules to be found in, or directly deduced from, Hindu law. *GANENDRA MOHAN TAGORE v. UPENDRA MOHAN TAGORE*

[4 B. L. R., O. C., 108]

2. ———— Nature and extent of power.—The testamentary power of disposition by Hindus has been established in Bengal by the decision of Courts of Justice. The nature and extent of such power cannot be governed by any analogy to the law of England,—the English system being one of the most artificial character, founded in a great degree on feudal rules, regulated by Acts of Parliament and adjusted by a long course of judicial determination to the wants of a state of society differing as far as possible from that which prevails among Hindus in India. *BHOOBUN MOYEE DEBIA v. RAM KISHORE ACHARYA*

[3 W. R., P. C., 15: 10 Moore's I. A., 279]

3. ———— Power of disposition of Hindus.—By the Hindu law as administered in the North-West Provinces a Hindu has power to make a testamentary disposition in the nature of a will. A disputed will made by a Hindu, disposing of self-acquired estate among his family, established. *NANA NARAIN RAO v. HURNE PUNTH BHAO*

[9 Moore's I. A., 99]

4. ———— Power over estate during life.—Any Hindu within these provinces, whether governed by the Bengal mode of succession or otherwise, possesses a power to bequeath an estate by will co-extensive with his power over the estate in his lifetime. *PITUM KOONWAR alias MUNAR BEEB v. JOY KISHEN DOSS* . . . **6 W. R., 101**

5. ———— Mitakshara law.—Under the Mitakshara law, a father can dispose of his self-acquired property, moveable and immoveable, at his own will, and he can, by will, make an unequal distribution of the same amongst his heirs. *BAWA MISHRA v. BISHEN PROKASH NARAIN SINGH*

[10 W. R., 267]

6. ———— Power to dispose of self-acquired immoveable property after adopting a son.—An adopted son does not stand in a better position, with regard to the self-acquired immoveable property of his adoptive father, than a natural-born son would occupy; and there is nothing in the Hindu law in this presidency to prevent a father from disposing by will of his self-acquired immoveable property, and so defeating the rights by inheritance of his adopted son. *PURSHOTAM SHAMA SHENVI v. VASUDEV KRISHNA SHENVI*

[8 Bom., O. C., 196]

HINDU LAW—WILL—continued.**1. POWER OF DISPOSITION—continued.****(a) GENERALLY—continued.**

7. ——— Power of disposition by will over ancestral property in Bombay.—A testator cannot in the town of Bombay dispose of ancestral property, even if it consist of moveables, to the prejudice of the rights of an existing grandson. **CHATTERBHOOJ MEGHJI v. DHARAMJI NARANJI**

[I. L. R., 9 Bom., 438]

8. ——— Power to dispose of separate and self-acquired property.—*Nephew's right to object to alienation.*—A Hindu without male descendants may dispose by will of his separate and self-acquired property, whether moveable or immovable, even in those parts of India which are governed by the Mitakshara; and the testamentary power may be exercised at least within the limits which the law prescribes to alienation by gift *inter vivos*. **ADJODHIA GIB v. KASHER GIB**

4 N. W., 31

9. ——— Bequest to widow with power of alienation over immoveable property.—A testamentary bequest of immoveable property to a Hindu widow with an express power of alienation conferred held to be valid, and to authorise alienation by her. As a husband is not incompetent to give such an interest in property to his wife, it cannot be contended that he is incompetent to bequeath it. **JEEWUN PUNDA v. SONA**

[1 N. W., Ed. 1873, 66]

10. ——— Unequal division of ancestral property.—*Illegality of will.*—Held that a will made by a Hindu dividing unequally ancestral property between his sons, and assigning a share to his wife with the power of disposing of it, was illegal under Hindu law. **BULDEO SINGH v. MAHABHER SINGH**

1 Agra, 155

11. ——— Disposition of ancestral and acquired property.—*Validity of will.*—A Hindu may make an alienation of his property to take effect after his death. The Hindu law in Madras admits of the testamentary disposition of property, whether ancestral or self-acquired. The testamentary power of a Hindu in Madras is co-extensive with his independent right of alienation *inter vivos*. **VALLI-NAYAGAM PILLAI v. PAHOHE**

1 Mad., 326

12. ——— Arbitrary disposition of self-acquired property.—*Validity of will.*—A will by which a testator gave to his brother four fifths of his self-acquired property and only one fifth to his son,—Held not to be invalid as being beyond his power of disposition. **NARAYANASAMI CHETTI v. ARUNACHALA CHETTI**

1 Mad., 487, note

13. ——— Power of disposition over ancestral property.—*Hindu without male issue.*—A will by a Hindu without male issue, kinsman, or coparcener, which after providing for the maintenance of his widow, daughters, and female relations, devised ancestral as well as other real and personal estate to trustees upon certain charitable trusts, was impeached by reason, first, that the testator had authorised his widow in an event which happened to

HINDU LAW—WILL—continued.**1. POWER OF DISPOSITION—continued.****(a) GENERALLY—continued.****Power of disposition over ancestral property—continued.**

adopt a son, which act would have rendered him incompetent to exercise a testamentary power; secondly, that at the time of the execution of the will the testator was not of sufficient mental capacity to make a testamentary disposition; and thirdly, that the testator being a Hindu had no power by law of devising ancestral estate by will. *Held* on appeal, affirming the decision of the Sudder Court in India, first, that although, in the absence of male issue of the deceased, there was a strong presumption, arising from religious considerations, in favour of a delegation by the deceased to his widow, of authority to adopt a son for him, yet that the evidence entirely failed to prove that fact; secondly, that the evidence established his mental capacity at the time of executing the will; and thirdly, that by the Hindu law prevailing at Madras a Hindu in possession without issue male, kinsman, or coparcener, had power to make a will disposing of ancestral as well as acquired estate. **NAGALUTCHMEN UNMAL v. GOPPOO NADARAJA CHETTI**

6 Moore's I. A., 306

14. ——— Extent of power of disposition.—*Bequest to idol.*—*Right of widow to maintenance.*—Although the Courts in India recognise the power of a Hindu to make a will, yet the extent of the power of disposition by a testator is to be regulated by the Hindu law, and cannot interfere with a widow's right to a proper maintenance. A Hindu by will gave all his moveable and immoveable property to his family idol, and after stating that he had four sons he directed that his property should never be divided by them, their sons or grandsons, in succession, but that they should enjoy "the surplus proceeds only," and the will after appointing one of the sons manager to the estate, to attend to the festivals and ceremonies of the idol, and maintain the family, further directed that whatever might be the surplus, after deducting the whole of the expenditure, the same should be added to the *corpus*; and in the event of a disagreement between the sons and family, the testator directed that, after the expenses attending the estate, the idol, and the maintenance of the members of the family, whatever nett produce and surplus there might be, should be divided annually in certain proportions among the members of the family. At the date of the will the members of the family were joint in estate, food, and worship. The accumulations of the income were divided as directed by the will. *Held*, first, that the bequest to the idol was not an absolute gift, but was to be construed as a gift to the testator's four sons and their offspring in the male line, as a joint family, so long as the family remained joint, and that the four sons were entitled to the surplus of the property after providing for the performance of the ceremonies and festivals of the idol, and the provisions in the will for maintenance; secondly, that the fact of the division of the income arising out of the testator's estate among the members of the family after the

HINDU LAW—WILL—continued.**1. POWER OF DISPOSITION—continued.****(a) GENERALLY—continued.****Extent of power of disposition—continued.**

testator's death did not constitute a division of the family. One of the sons of the testator died, leaving three sons, one of whom also died without issue, leaving a widow. *Held*, further, that the direction contained in the will that the property should go in the male line did not exclude the widow of the grandson of the testator, and that the widow was entitled to a third share of a fourth part of the property and accumulations, without prejudice to her right as a Hindu widow, when the property should be divided. **SONATUN BYSACK v. JUGGUSOONDREE DOSSEN** [8 Moore's I. A., 66]

15. ——— Will omitting to provide for widow.—Validity of will.—Semble.—The will of a Hindu would not be invalidated merely by its omitting to provide for his widow. **VALLI-NAYAGAM PILLAI v. PACHOHE** . 1 Mad., 326

16. ——— Omission to provide maintenance for brother's widow.—Validity of will.—A will is not invalidated by the circumstance that another than the devisee is competent to confer a greater amount of spiritual benefit upon the testator; nor on the ground of its making no provision for the maintenance of the widow of the testator's deceased brother. **ROOKMONEE DEBIA v. KRISHNO CHURN MISSE** . 20 W. R., 147

17. ——— Devise to prejudice of wife.—Zemindar without issue.—By the Hindu law a zemindar having no issue is capable of alienating by deed or will a portion of his estate which in default of lineal male issue and on intestacy would vest in his wife, without her consent. **MULRAZ LACHEMIA v. CHALAKANY VENKATA RAMA JAGANADHA ROW** . 2 Moore's I. A., 54

18. ——— Will against interests of widow and reversioner.—Inofficious will.—The will of a childless Hindu giving power to adopt a son, though opposed to the interests of the widow and the next heir in reversion, is not inofficious. **SARODA SOONDREY DOSSEN v. TINCOWRY NUNDY** [1 Hyde, 223]

19. ——— Effect on will of subsequent adoption.—Validity of will.—Where a separated Hindu made a will and subsequently adopted a son, the boy adopted and his father being aware of the provisions of the will, in which an adequate provision was made for the adopted son, it was held that the subsequent adoption did not invalidate the will. **VINAYAK NARAYAN JOG v. GOVINDRAY CHINTAMAN JOG** . 6 Bom., A. C., 224

20. ——— Devise away from remote kinsman.—Separate property.—The title of a remote kinsman, though heir of a Hindu testator, who died without leaving issue, or any near relative surviving him, and with whom that remote kinsman had not been united in food, worship, or estate, can-

HINDU LAW—WILL—continued.**1. POWER OF DISPOSITION—continued.****(a) GENERALLY—continued.****Devise away from remote kinsman—continued.**

not prevail against the title of a devisee of that testator, whether such property was by the testator self-acquired or held in severalty, either by virtue of a partition, or of the non-existence, or, if any did ever exist, the extinction of coparceners. **NAROT-TAM JAGJIVAN v. NARSANDAS HUKIKRANDAS** [8 Bom., A. C., 6]

21. ——— Alienability by coparcener of his undivided share of ancestral property.—Mitakshara law.—It having been contended that as a father and his sons were during his life coparceners in the family estate, one of such coparceners being able, according to the decisions of the Court, by act *inter vivos* to make an alienation of his undivided share binding on the others, it followed that the father might dispose by will of his one-third share. *Held* that, under the Mitakshara law, as received in Bombay, the father could not dispose of his one-third share by will. The doctrine of the alienability, by a coparcener, of his undivided share, without the consent of his co-sharers, should not be extended, in the above manner, beyond the decided cases. The Bombay Court had ruled that a coparcener could not, without his co-sharer's consent, either give or devise his share, and that the alienation must be for value. The Madras Court had ruled that although a coparcener could alienate his share by gift, that right was itself founded on the right to partition, and died with the coparcener, the title of the other co-sharers vesting in them by survivorship at the moment of his death. Without a decision as to which of these conflicting views, in regard to alienation by gift, was correct, the principles upon which the Madras Court had decided against the power of alienation by will, were held to be sound and sufficient to support that decision. **LAKSHMAN DADA NAIK v. RAMCHANDRA DADA NAIK** . 1 I. L. R., 5 Bom., 48 [I. R., 7 I. A., 181]

Affirming the decision of the High Court in S. C. [I. L. R., 1 Bom., 561]

22. ——— Power of coparcener to dispose of ancestral property.—In a suit by an adopted son to set aside a will made by his father disposing of immoveable ancestral property, *Held* that the will was of no effect as a valid devise of property. At the moment of death the right of survivorship was in conflict with the right by devise; and the right by survivorship being the prior title took precedence to the exclusion of that by devise. **VITLA BUTTEN v. YAMENAMMA** . 8 Mad., 6

See **GOOROOVA BUTTEN v. NARAINASAWMY BUTTEN** . 8 Mad., 13, note

23. ——— Devise against interest of unborn son.—Right of unborn son to ancestral property.—According to the Hindu law which obtains in the Madras Presidency, the right of a son in

HINDU LAW—WILL—continued.**1. POWER OF DISPOSITION—continued.****(a) GENERALLY—continued.****Devise against interest of unborn son—continued.**

the womb to ancestral property cannot be defeated by a will or gift. *Quere*,—Whether this rule would govern the case of an alienation for value. *MINAKSHI v. VIRAPPA* . . . I. L. R., 8 Mad., 89

(b) DISHERISON.

24. ——— Power to disinherit sons.—*Gift absolute to widow.—Absence of express declaration of disherison.*—A Hindu died, leaving a widow, two infant sons, and a daughter, and having made a will in English, of which the following is the material portion: "I give, devise, and bequeath unto my wife, L. D., and her heirs and assigns for ever, all my real and personal estates and effects, and do appoint my said wife sole executrix of this my will." *Held* (reversing the decision of *MAGEHERSON, J.*) that the wife took an absolute estate with full power of alienating the property, and not merely as trustee and manager for the infant sons. It is not necessary that there should be an express declaration of the testator's desire or intention to disinherit his sons if there is an actual gift to some other persons expressed in clear and unequivocal words. *PROSUNNO COOMAR GHOSH v. TARBUCKNATH SIEKAR* [10 B. L. R., 267

S. C. TARBUCKNATH SIEKAR v. PROSUNNO COOMAR GHOSH . . . 19 W. R., 48

But see *ROOPLAL KHETTRY v. MOHIMA CHURN ROY* . . . 10 B. L. R., 271, note

25. ——— Law of Western India.—In estates in which the ordinary Hindu law of inheritance administered in Western India applies, it is not competent to a father to dispose of his ancestral property to one son to the prejudice of the others. *BHUVANGRAV BIN DAVALATRAY GHORPADE v. MALOJIRAV BIN DAVALATRAY GHORPADE* [5 Bom., A. C., 161

26. ——— Power to disinherit heir.—*Reddi caste.*—A father-in-law, although of Reddi caste, cannot disinherit his heir in favour of his son-in-law. *TAXUMANA REDDI v. PERUMAL REDDI* [1 Mad., 51

27. ——— Provision for disherison on change of religion.—A will that provides for an heir becoming disinherited on changing his religion, does not apply to the case of a Hindu becoming a Vedantist, nor does that form of Hinduism incapacitate him from being a manager. *ANUND COOMAR GANGOOY v. RAKHAL CHUNDER ROY* [8 W. R., 278

28. ——— Intention to disinherit how shown.—Exclusion from residuary estate.—In the exercise of the testamentary powers amongst Hindus, the intention to disinherit must be clear and unambiguous. Mere bequests of special portions of

HINDU LAW—WILL—continued.**1. POWER OF DISPOSITION—continued.****(b) DISHERISON—continued.****Power to disinherit heir—continued.**

the testator's estate to the heir, without language of disherison, do not exclude him from the undisposed-of residue. *LALLUBHAI BAPUBHAI v. MANKUVARBAI* . . . I. L. R., 2 Bom., 388

29. ——— Power to disinherit one son in favour of another.—Gift or bequest to one son to exclusion of others.—A Hindu governed by the Mitakshara law, who has two sons undivided from him, cannot, whether his act be regarded as a gift or a partition, bequeath the whole, or almost the whole, of the ancestral moveable property to one son to the exclusion of the other. *Ramachandra Dada Naik v. Dada Mahadev Naik, 1 Bom., 4p., 76*, distinguished and explained. *LAKSHMAN DADA NAIK v. RAMCHANDRA DADA NAIK. RAMCHANDRA DADA NAIK v. LAKSHMAN DADA NAIK* [I. L. R., 1 Bom., 561

S. C. on appeal to the Privy Council, affirming the decision of the High Court

[I. L. R., 5 Bom., 48

See the case of *GANNENDRA MOHAN TAGORE v. UPENDRA MOHAN TAGORE*

[4 B. L. R., O. C., 108

in which it was held that the son cannot be disinherited by words expressing he is not to take any benefit under the will. He would take by right of inheritance whatever is not validly disposed of. The Privy Council, without deciding whether a son could be deprived of maintenance, considered an adequate provision had been made for him. *JOTINDRA MOHAN TAGORE v. GANNENDRA MOHAN TAGORE* [9 B. L. R., 377; 18 W. R., 359

L. R., I. A., Sup. Vol., 47

2. NUNCUPATIVE WILLS.

30. ——— Validity of nuncupative will.—Hindu Wills Act (XXI of 1870).—A nuncupative will, or a verbal bequest, of his separate property made by a separated Hindu, beyond the limits of the ordinary original jurisdiction of the High Court of Bombay, and not relating to any immoveable property to which the Hindu Wills Act (XXI of 1870) applies, is valid. *BHAGVAN DALLABH v. KALA SHANKAR* . . . I. L. R., 1 Bom., 641

31. ——— Power to make nuncupative will.—Moveable and immoveable property.—A Hindu may make a nuncupative will of property, whether immoveable or moveable. *SRINIVASAMMAL (CRINIVASAMMAL) v. VIJAYAMMAL* . 2 Mad., 37

32. ——— Powers of disposition by nuncupative will.—Self-acquired property.—Disherison of son.—*Quere*,—Whether, under Hindu law, a father has power by a nuncupative will to dispose of self-acquired immoveable property to the complete disherison of a son. *SUBBAYYA v. CHELLAMMA* . . . I. L. R., 9 Mad., 477

HINDU LAW—WILL—continued.**2. NUNCUPATIVE WILLS—continued.**

33. ——— Proof of nuncupative will.—*Finding as to factum of will.*—It was observed that a person who rests his title on so uncertain a foundation as the spoken words of a man since deceased is bound to allege, as well as to prove, with the utmost precision, the words on which he relies, with every circumstance of time and place. The finding below as to the *factum* of the will in this case was, however, upheld. **BEERPERTAB SAHNE v. RAJENDER PERTAB SAHNE** . 9 W. R., P. C., 15 [12 Moore's I. A., 1

34. ——— Written words assented to but not signed by testator.—A testamentary paper drawn up in the lifetime of the testator, when, though very ill, he was in the full possession of his senses, and duly attested by the subscribing witnesses, who depose that it was drawn according to the instructions of the testator, and that he in their presence signified his assent thereto, was held to be sufficient under Hindu law. **TARA CHAND BOSH v. NOBREN CHUNDER MITTAR**

[3 W. R., 188

35. ——— Will, Revocation of, by parol.—*Intention to destroy will not carried out.*—The will of a Hindu may be revoked by parol, and where definite authority is given by him to destroy his will, with the intention of revoking it, that is in law a sufficient revocation, although the instrument is not in fact destroyed. **PERTAB NARAIN SINGH v. SUBHAO KOORR**

[I. L. R., 3 Cal., 626 : 1 C. I. R., 118
L. R., 4 I. A., 228

3. TESTAMENTARY DOCUMENTS.

36. ——— Documents amounting to will.—*Validity of will.*—S., a Hindu, having a wife and one daughter, executed in his last illness a document attested by two witnesses as follows: "S., the proprietor of, &c. Up to this date I have no son of the body. Under these circumstances the maliks of the whole of my estate, real and personal, are my wife B. C. and my daughter W. C. Therefore I, considering this, for the purpose of registering the names of my wife and daughter in substitution of my own name, appoint B. as my attorney. It is proper that the aforesaid attorney, after presenting himself before the hazaar, should petition to the above effect asking for a mutation. Whatever is done in the management of the case, I confirm it as my own act. Dated," &c. Three days before the death of S., B., the person named as mooktear, presented a petition of S. to the Collector, reciting the want of heirs male, and which then continued thus: "Under these circumstances my wife B. C. and my daughter W. C. are my heirs. Be that as it may, after my death all my property, paying revenue to Government or rent-free, will devolve upon my aforesaid wife and daughter; consequently, keeping this in view, I file this petition to you, praying that, on striking off my name, the names of B. C., my wife, and of W. C., my daughter, be substituted for

HINDU LAW—WILL—continued.**3. TESTAMENTARY DOCUMENTS—continued.****Documents amounting to will—continued.**

my name as proprietors in regard of the estate, revenue-paying and rent-free, in the books of mutation and the Collectorate papers, and may remain current from this date." Held that these two documents constituted a disposition of his property by S. by a testamentary instrument, valid according to Hindu law; and that upon the death of S. his wife and daughter acquired a joint interest in the property. **KOOLDEBNARAIN SHAHNE v. WOOMA COOMAREE** . Marsh., 357 : 2 Hay, 370

37. ——— Deed of permission to adopt.—*Absence of words of devise and intention to dispose of estate.*—A registered deed of permission to adopt, which contained no words of devise, was held not to be of a testamentary character, there appearing no intention on the part of the maker that the document should contain any disposition of his estate, except so far as such disposition might result from the adoption of a son under it. **BHOOBUN MOYE DEBIA v. RAM KISHORE ACHARJEE**

[3 W. R., P. C., 15 : 10 Moore's I. A., 279

4. ATTESTATION AND PROOF OF WILLS.

38. ——— Unattested will.—*Effect of probate.*—Before the Hindu Wills Act, the will of a Hindu in writing signed by him, but not attested by witnesses, admitted to probate, and held to operate to pass not only moveable but also immoveable property. **MANCHABJI PESTANJI v. NARAYAN LAKSHMANJI** . 1 Bom., 77

39. ——— Signature.—*Rules of documentary evidence.*—A will by a Hindu is not invalid because the text of it was not written by the testator himself, and because his signature is not attested. The rules of Hindu law relating to documentary evidence are not to be applied strictly in the case of wills. **RADHABAI BIN RAMJI v. GANESH TATYA GHOLAP** . I. L. R., 3 Bom., 7

40. ——— Signature.—*Formalities of making will.*—The will of a Hindu in the mofussil before the Hindu Wills Act need not have been signed by the testator, or made with any particular formality; all that was requisite was that it be a complete instrument, and express the deliberate intentions of the testator. **VINAYAK NARAYAN JOG v. GOVINDRAV CHINTAMAN JOG** . 6 Bom., A. C., 224

41. ——— Proof of will.—*Inofficious will.*—A., a Hindu, died, leaving two grandsons, B. and C., to whom his estate descended. They were joint in food, worship, and estate. The property was wholly situate in Bengal, and the family, who originally came from the Western Provinces, had long been resident there. C. died, leaving his widow D. and his brother B. surviving him. B., who was manager, died 2½ years after C. After B.'s death D. brought her suit to establish her right as widow of C. to a moiety of the family property. The representatives of B. set up an instrument, which

HINDU LAW—WILL—continued.**4. ATTESTATION AND PROOF OF WILLS**
—continued.**Proof of will—continued.**

they alleged to be the will of *C.*, whereby he bequeathed his share to *B.*, reserving the maintenance to *D.* The Judge of the Zillah Court of Nuddea held that the alleged will of *C.* was genuine, and dismissed *D.*'s suit. The High Court, on appeal, held (1) that *D.* ought, firstly, to have shown her title to sue,—i.e., having admitted the family came from Mithila, she ought to have shown that they were no longer governed by the Mitakshara law; (2) that for several generations the rule of inheritance had been according to the Dayabhaga; (3) that the alleged will was not proved (there was evidence before the Court of the *factum* of the will adequate to the proof of an ordinary will, but the Court held that this evidence was outweighed by the internal improbabilities); (4) that if the rule of inheritance was not according to the Dayabhaga the will was inofficious. On appeal to the Privy Council,—*Held*, first, it would be a rash conclusion on the state of the evidence in the case to suppose a preference of the law of Bengal likely to be operative on the mind of the testator; and therefore there was no foundation for treating the will as inofficious. Second, it was not necessary to decide whether the rule of inheritance was according to the Dayabhaga or the Mitakshara. Third, the evidence was adequate to the proof of an ordinary will, and there was no internal improbability of the will sufficient to discredit it.

SURENDRA NATH ROY v. HIRAMANI BARMANI
[1 B. L. R., P. C., 26: 10 W. R., 35
12 Moore's I. A., 81]

42. ——— Proof of execution of will.—Handwriting.—By will dated in 1837, a testator directed his property to be held in a particular way, and gave his widow power to adopt. In 1843, she adopted a son under the will, with the knowledge of the members of the family, and the will was for a period of twenty-seven years generally recognised and acted on by the testator's family. The Judicial Committee held (reversing the decree of the High Court), in accordance with the finding of the Principal Sudder Ameen, that the will was proved. Where a will was executed by the testator signing with the Bengali letter "M.," and it was argued that the testator being in very weak health, the firm way in which the "M" was written threw discredit upon it, the Judicial Committee preferred the decision of the Native Judge on this point to that of the English Judges of the High Court, and expressed doubt as to the value of the style of such writing as evidence in favour of the will being forged. *RAJENDRA NATH HALDAR v. JAGENDRA NATH HALDAR* 7 B. L. R., 216
[15 W. R., P. C., 41: 14 Moore's I. A., 67]

5. CONSTRUCTION OF WILLS.**(a) GENERAL RULES.**

43. ——— Statute of superstitious uses.—Inapplicability of English law to Indian

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(a) GENERAL RULES—continued.****Statute of superstitious uses—continued.**

wills.—The English law as to superstitious uses does not apply in the Courts in India. *ADVOCATE GENERAL v. VISHVANATH ATMARAM* . . . 7 Bom., Ap., 9

JUDAH v. JUDAH 5 B. L. R., 433

44. ——— Necessity of words of inheritance.—Interest in freehold estate.—No words of inheritance are requisite to continue to his heirs a Hindu's interest in a freehold estate. *ANUND-MOHNY DOSSEN v. DOS* . . . 4 W. R., P. C., 51
[8 Moore's I. A., 43]

45. ——— Person in existence at death of testator.—Person competent to take under a will.—The doctrine laid down by the Privy Council in the *Tagore Case*, 9 B. L. R., 377, that only a person, either in fact or in contemplation of law, in existence at the death of a testator can take under his will, is a general principle of Hindu law applicable as well to Hindus governed by the law of the Mitakshara as to those governed by the Dayabhaga. *MANGALDAS NATHUBHOY v. KRISHNABAI*
[1 L. R., 6 Bom., 38]

46. ——— Devise to persons who would be heirs.—Nature of interest taken by them.—Quere.—Whether when a Hindu devises to his sons property which, in the absence of such devise, they would take as his heirs, the sons shall be considered to take as devisees or as heirs, *VALOO CHETTY v. SOORYAH CHETTY*
[1 L. R., 2 Mad., 252]

47. ——— Rule of English law as to undisposed-of residue.—Executor.—Disinheritance.—The rule of English common law, that the undisposed-of residue of personal estate vests in the executor beneficially, does not apply to the will of a Hindu testator in India. *LALLUBHAI BAPUBHAI v. MANKUVARBAI* 1 L. R., 2 Bom., 383

(b) SPECIAL CASES OF CONSTRUCTION.

48. ——— Direction as to enjoyment between widow and sons.—Where a Hindu by his will, after bequeathing a legacy to his widow of Rs. 1,000 and appointing her executrix along with other executors, directed that his executors should divide the estate amongst his sons in accordance with the shastras after his youngest son had attained majority,—*Held* that such direction did not amount to an absolute bequest to his sons so as to exclude the widow from being entitled to a share upon a partition between the sons. *KISHORI MOHUN GHOSH v. MONI MOHUN GHOSH*
[1 L. R., 12 Cal., 165]

49. ——— Words "share and share alike."—*Life-estate of widow is immoveable property.*—*V. and M.*, Hindus residing in Bombay, made a deed of partition in 1823 of the whole of the family property, moveable and immoveable, which had come

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Words "share and share alike"—continued.**

into their joint enjoyment on the death of their father. *V.* died in 1860, having made a will prepared by an English solicitor, in the English language and form, by which, after various bequests to members of the family, he disposed of the residue of his estate, one-third share to his son *V.* absolutely; another third to his son *L.* absolutely; "and the remaining clear third share to my grandsons, *K.*, *V.*, *G.*, and *N.*, the sons of my late son *M.* deceased, their and each of their respective heirs, executors, administrators, and assigns, share and share alike." These residuary bequests, it was provided, were not to take effect until after the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life; but the estate was divided by the award of arbitrators in 1855, after making a provision for the widow, in substantial accordance with the directions of the will. *V.* and *L.* immediately thereafter took possession of their respective third shares of the moveable and immoveable estate, but the third share allotted to the four sons of *M.*, who were all still infants, remained unapportioned until 1856, when, on a suit being filed, the greater part of the moveable property was apportioned. The immoveable property allotted to them remained unapportioned, and was managed, first, by the widow of *M.* till her death in 1855; then by his eldest son *K.*, till his death, without male issue, in 1859; then by the next eldest son *V.* till his death, without issue, in 1864; and afterwards by the elder of the two surviving sons; and the proceeds were treated throughout as though the property was held in coparcenary by the four sons as a joint and undivided Hindu family. In a suit brought by *L.*, the widow of *K.*, against *K.*'s surviving brothers, and *S.*, the widow of his brother *V.*, in which *L.* claimed to be absolutely entitled as heir of her husband [and also as heir of her daughter, who died after her husband's death, childless and unmarried,] to a fourth part of the third share of the estate allotted by the award of 1855.—*Held* in the lower Court (1) that the words "share and share alike," occurring in the will of *V.*, ought not to be construed as necessarily constituting a tenancy-in-common, with all the incidents attached thereto in English law, but that each of the four sons of *M.* took a separate share in the third of the testator's residuary estate; the share of each son going on his decease to those who would, according to Hindu (and not according to English) law, be his heirs as a separated Hindu; (2) that with regard to the immoveable property devised by the will and allotted by the award to the sons of *M.* there never was a union of estate, a coparcenary, from the commencement; and consequently there was no re-union in the sense of the Hindu law, notwithstanding joint enjoyment and common residence; but only postponement for a time, and for purposes of convenience, of an apportionment of the estate, which was accordingly (among other things) decreed. **LAKSHMIBAI v. GANPAT MORABA** . . . 4 Bom., O. C., 150

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Words "share and share alike"—continued.**

Held, on appeal, that the language of the testator showed an intention that his grandsons should take the one third between them in severalty and as members of a divided family, and that the will must be so construed. And the doctrine that ancestral property after partition can be disposed of as self-acquired property was disapproved of as being opposed to the authorities and general spirit of Hindu law. **GANPAT MORABA v. LAKSHMIBAI**

[5 Bom., O. C., 128]

50. ——— "Malik."—Power to widow to adopt a son.—Absolute estate.—*N.* had two wives, one of whom died in his lifetime, leaving a daughter (the plaintiff), and *K.* who survived him, the mother of another daughter (the defendant). *N.* died, having, in February 1844, made his will which contained the following passage: "Whatever I have of moveable and immoveable property, my wife *K.* is the *malik* thereof: she will pay whatever debts there exist and receive whatever dues there are receivable; and I have given commandment (permission) to my wife to adopt a son. When the adopted son attains his age he will become the *malik* of the whole of my property and will perform the *shrad* and *tarpan* of my father and father's father; and in the event of any good or evil befalling the said adopted son, she will again adopt a son . . . and upon the adopted son attaining his age, he will become 'the *malik*' of the whole of the property." *K.*, who survived the testator, did not adopt, but took possession of the property and remained in possession till she died in 1875; and after her death the testator's children held the properties in equal shares, with the exception of a house, which the defendant had taken sole possession of. The plaintiff brought this suit for partition, and for an account of that part of the property which had been in sole possession of the defendant. The defendant contended that her mother took an absolute estate under the will, and that she as her heir was entitled to the whole estate. *Held* that the use of the word "*malik*" as applied to the widow did not necessarily mean that she should take an absolute estate, and that the directions in the will to adopt, and that the adopted son should become *malik*, rather indicated an intention on the part of the testator that the widow should only take a limited estate, and that the word "*malik*" as applied to the widow could not therefore be interpreted as giving her a larger interest. **PUNCHOOMONEY DOSSEE v. TROYLUCKO MOHINNY DOSSEE** . . . I. L. R., 10 Cal., 342

51. ——— Beneficial interest in surplus.—Prohibition of alienation.—A Hindu lady left by will to her sons lands belonging to her to support the daily worship of an idol, and defray the expenses of certain other religious ceremonies, with a provision that, in the event of there being a surplus after these uses had been satisfied out of the revenue of the said lands, such surplus should be applied to the support of the family. *Held* that this provision

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Beneficial interest in surplus—continued.**

amounted to a bequest of the surplus to the members of the joint family for their own use and benefit, and that each of the sons of the testatrix took a share in the property, which, after satisfying the religious and ceremonial trusts, might be considerable, and could not be presumed to be valueless. *Held*, also, that directions given by the testatrix in her will to the effect that her heirs should have no power of gift or sale over the property bequeathed, and that it should not be attached or sold on account of their debts, being inconsistent with the interest actually given, were wholly beyond her power, and must be rejected as having no operation. *ASHUTOSH DUTT v. DOORGA CHURN CHATTERJEE*

[*L. L. R.*, 5 Calo., 438 : 5 *C. L. R.*, 296
L. R., 6 *I. A.*, 132

52. ——— Omission or refusal to adopt.—Widow with authority to adopt.—A Hindu will contained the following clause: "I give out of my two-anna share of the whole of my personal estates ₹7,000 to my mother (one of the defendants), and ₹5,000 to my wife (the plaintiff). Besides the two-anna share of the wealth in ready-money and landed property which remains, you my brother will keep under your own charge; you are at present malik of the whole of the property; as master and manager of the entire property, you will perform all acts; you will cause one of your sons to be received in adoption." The brother died leaving a will, by which he committed to his wife and mother the charge of his own property and that of his brother, and also the duty of giving his son in adoption to his brother. The defendants—*viz.*, his wife and mother,—proved the will, and took possession of the property. The plaintiff omitted to adopt. Her husband died in 1851, and the suit was brought in 1867. *Held* that the plaintiff, notwithstanding her omission to adopt, succeeded to her husband's estate for a Hindu widow's interest therein. *Held* by *PRACOCK, C. J.*, and *MARKBY, J.*, that the estate descended to the widow, plaintiff, subject to the two legacies; and that she did not forfeit it even if she refused to adopt. *PRASANMAYI DAS v. KADAMBINI DAS*

3 *B. L. R.*, O. C., 85

53. ——— Double adoption.—Gift to sons by implication as devisees.—Intention.—Persona designata.—*N. C. G.*, a Hindu, died without issue, leaving a widow (the plaintiff). He left a will by which he gave a conditional power of adoption in the following words: "My wife is supposed to be pregnant with child; if her conception be true, and she be delivered of a male child, then there shall be no necessity for the adoption of children as mentioned below; but if a daughter be born, she will, in that case, adopt the twain mentioned below, and whatever property there shall exist, consisting of moveables and immovables, &c., my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority; and if a son be born and happen to die before attaining majority, in that case she shall adopt

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Double adoption—continued.**

the sons of my sisters mentioned below, and for that purpose I give her, that is to say my wife, permission that she, that is, my said wife shall, in conformity with our shastras, adopt the illustrious *S.*, the third son of *B. G.*, and *O. C.*, the youngest son of *S. G.*, an inhabitant of Autpoore,—that is to say, the two sons of my two uterine sisters, in doing which there shall be no deviation. Should my wife not adopt the children after my decease, then the executors named hereinafter shall, according to this will and in pursuance of the permission given by me, cause the said two children to be received in adoption. If any of the said adopted sons depart this life before attaining the age of majority, then one of the uterine brothers of the deceased adopted son shall be received in adoption according to law in the room of deceased adopted son," &c. The plaintiff did not give birth to either son or daughter, nor did she adopt either of the persons indicated by the will. *S.* died in 1865, and *O. C.* was living at the date of the suit and was of age. *Held*, that whether the two persons indicated could or could not be legally adopted as pointed out by the will, according to Hindu law, there was a gift to them as devisees by implication. *Doss MONEY DOSSEN v. PROSONOMOY DOSSEN*

[2 *Ind. Jur.*, N. S., 18

54. ——— Gift.—Condition precedent.—Persona designata.—Assuming that the testator, in using the words, "According to our shastras, the said two adopted sons will perform our obsequies, and shall become successors of our ancestral and self-acquired property," intended to make a substantive gift to named individuals,—*Held* that the gift is inoperative if the individuals do not fulfil the character of adopted sons. *SIDDHOSZY DOSSEN v. DOORGACHURN SETT*

[2 *Ind. Jur.*, N. S., 22 : *Bourke, O. C.*, 360

55. ——— Testamentary gift.—Intention.—Subsequently adopted son.—Res judicata.—Pending administration suit.—Persona designata.—*P.*, a Hindu inhabitant of Calcutta, of the Sudra caste, having two wives,—*M.*, the elder wife, and *N.*, the younger,—but no issue by either of them, adopted two sons, the plaintiff and *S.* This double adoption took place on one and the same occasion, but the plaintiff went through the necessary ceremonies in point of time before *S. P.* gave the plaintiff in adoption to his wife *M.*, and *S.* to his wife *N.* *P.* afterwards died, leaving *M. N.*, the plaintiff, and *S.*, and leaving property and a will, in which he said,—"Having adopted two sons, I have given my elder son to my elder wife to bring him up, and they both are respectively nurturing the two sons, as sons born of their own womb. For the purpose of protecting and preserving the property after my decease, I appoint my elder uterine brother *A.* executor, and my said two wives, *M.* and *N.*, executrices. If either of these my two sons depart this life without issue (which God forbid!), I direct either of my wives whose foster son shall have died to take another

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Double adoption—continued.**

son in adoption pursuant to this my direction, and having done so, should a similar misfortune happen, she shall have the option of adopting other sons in succession, and that son shall inherit the share of my deceased son. Further, besides one-half share of the moveable and immoveable properties of which I am possessed jointly with my elder uterine brother, whatever, &c., belonging to me in my separate, &c., account, my said executor and executrixes shall become possessed of the whole after my decease, and shall recover my dues and pay the undermentioned legacies, &c., &c. Afterwards, when my adopted sons shall have attained their ages of majority, my executor and executrixes shall account for and give them their shares on their becoming of age. If they continue to be unanimous, well and good; if not, they may divide and receive their respective shares of the property and live separate as to food, &c., &c." The executor and two executrixes proved the will. Afterwards S. died, an infant and unmarried, and thereupon N., his mother in adoption, assuming to act under the will, adopted the defendant O. in his place, the other son, the present plaintiff, still living. The plaintiff and O. afterwards, while still infants, filed a bill by their next friend against P.'s executor and executrixes for the administration of the estate. N. afterwards died before the present suit, which was brought by the plaintiff against M., the surviving wife, and O., praying that the plaintiff might be declared the only son and heir of P., and that an account might be decreed against the defendants. Held by the Court below and the Court of Appeal, that there was a clear designation of the plaintiff and S., and of O., the subsequently-adopted son, to enable them to take under the will. Held also by both Courts, that the administration suit was no bar to the present suit. And held by TRENOR, J., dissenting from the rest of the Court on the appeal, that the instrument executed by P. was partly a will and partly a permission to adopt; that as to the first part of the instrument, there was sufficient designation of the persons as held by the rest of the Court; and as to the second part, that it was a condition precedent to any one taking under that permission that he should be a validly adopted son according to the Hindu law. **MONEMOTHANATH DAY v. ONOTHANATH DAY.** 2 Ind. Jur., N. S., 24

S. C. in Court below . Bourke, O. C., 189

56. ——— Gift by implication.—Persona designata.—Power to adopt.—A Hindu testator died, leaving a widow, and leaving also a will, which contained the following clause: "My wife is supposed to be pregnant with child; if a daughter be born she will in that case adopt the twin mentioned below (the plaintiff and one S. G.); and whatever property there shall exist, consisting of moveable and immoveable, my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority." S. G. died; no child was borne by

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Double adoption—continued.**

the widow. The plaintiff having attained his majority brought a suit for declaration of his title, alleging that he had been duly adopted under the will; but that, whether he had been adopted or not, he was entitled under the will to a share in the moveable and immoveable property of the testator. No valid adoption took place. Held that there was no gift by implication to the plaintiff. The testator only intended him and S. G. to take under the will in the event of their being adopted. **Dosemoney Dosses v. Prossomoye Dosses,** 2 Ind. Jur. N. S., 18, not followed. **ABHAI CHARAN GHOSH v. DASHMANT DAS**

[6 B. L. R., 623

57. ——— Persona designata.—Bequest to person not holding character supposed by testator.—Plaintiff sued as the widow of an adopted son for the property of the adoptive father, and also on the ground that the adopted son was the devisee of the adoptive father. The Civil Judge decided that the adoption of the plaintiff's husband was invalid according to Hindu law, and that the devise, having been made to the plaintiff's husband as adopted son, was invalid. Held (reversing the decision of the Civil Judge) that as the language of the testator sufficiently indicated the person who was to be the object of his bounty, the person so indicated was entitled to take, although the testator conceived him to possess a character which in point of law could not be sustained. **JAVANI BHAI v. JIVU BHAI**

[2 Mad., 462

58. ——— Bequest to idol.—Appointment of shebait.—A testator by will left certain property to an idol and appointed a shebait. The person so appointed died without taking charge of the property or filling the office, and the lands remained in the possession of the testator's family. Held that this property would follow the course of the other properties left by the testator, and be divided with them among the devisees under the will. **SARODA SUNDARI DEBI v. GOBINDMANI DEBI**

[2 B. L. R., A. C., 187, note

59. ——— Bequest for the performance of ceremonies.—Bequest for giving feasts to Brahmins.—Bequest of undivided share of joint property.—A bequest by a Hindu for the performance of ceremonies and giving feasts to Brahmins is valid. A Hindu has no power to bequeath his undivided share of joint family property. **LAKSHMI-SHANKAR v. VAJANATH** . I. L. R., 6 Bom., 24

60. ——— Managers, Incapacity of, to act.—Appointment of other managers.—Where particular persons have been appointed by will to be managers, and any of them become incapable and refuse to act, it does not follow that others should be appointed in their stead. Where managers by becoming Vedantists are incapable themselves of performing ceremonies contemplated in the will, they may make over to any person concerned the requisite

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Bequest for the performance of ceremonies—continued.**

expenses for such ceremonies. **ANUND COOMAR GANGOOLY v. RAKHAL CHUNDER ROY**

[S W. R., 278]

61. ———— Bequest for charitable purposes.—Dedication.—Inheritance.—A Hindu testator in Bombay who left a nephew (son of a deceased brother) made a bequest for charitable purposes. The nephew, entitled either as heir or as legatee of the residue of the estate, contended that the only property of which the testator during his lifetime was in possession was joint family estate, and that under the law of the Mitakshara the testator had no power to dispose of it as he had attempted. A specific part of the testator's estate having after his death been set apart as applicable to the trust for the charitable purposes, and the nephew having received the residue, he agreed with the executors that he would act jointly with them in carrying out the trust, and became one of the trustees. *Held* that the property had been validly dedicated to the charitable purposes; whether or not, the will alone was sufficient, with regard to the nature of the testator's interest in the estate, to constitute the trust as against the heir. **PARMANANDAS v. VENAYEKRAO**

[I. L. R., 7 Bom., 19; 12 C. L. R., 92
L. R., 9 I. A., 86]

62. ———— Vested and contingent interests.—Inability of widow to recover property not in possession of husband.—A Hindu testator, after the death of his widow, gave a moiety of his property to his brother *A.*, and on his death to *A.*'s two sons, *B.* and *C.* *A.* died in the lifetime of the testator's widow, and a complete division of all *A.*'s property which was held in coparcenary was agreed upon by *B.* and *C.* *B.* also died in the lifetime of the testator's widow, and on the death of the testator's widow *B.*'s widow claimed his share. *Held* that *B.* and *C.* took *A.*'s moiety under the will as tenants-in-common, and that each of them had a vested interest in a one-fourth share, though the actual enjoyment was postponed until the death of the widow; and that the claim of *B.*'s widow was not barred by the doctrine of Hindu law that a widow succeeding as heir to her husband cannot recover property not in the possession of her husband, which doctrine was held to be inapplicable to the case of property in which the husband had a vested interest under a will or deed, though the actual enjoyment thereof was postponed during the lifetime of another. **REWUN PERSAD v. RADHA BERRY**

[7 W. R., P. C., 35; 4 Moore's I. A., 137]

63. ———— Deed of gift.—Devisees and donees.—A Hindu inhabitant of Calcutta died in 1837, leaving three sons, *G.*, *T.*, and *M.*, and several daughters; he left property, moveable and immoveable, and a will dated 29th October 1836, as well as a deed of gift of even date, but executed in point of time prior to the will. By the deed of

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Vested and contingent interests—continued.**

gift he gave his property as follows: To his three sons, *G.*, *T.*, and *M.*, his self-acquired estate and his patrimony, *i.e.*, his own share, agreeably to the will of his father, giving to them power of making a gift or sale, and to hold and enjoy, themselves, sons, grandsons, and so on in succession. His family dwelling-houses to remain in equal shares, his sons to dwell therein, but not to be able to let or sell them to any one else; then followed certain provisions with regard to a family idol, for religious observances, &c., after which the deed went on to say: "You will divide in three equal shares and receive the ready money and company's papers and bank's shares, &c., which I have; you will not be able to give in gift or sell these properties under twenty years of age; the children legitimately begotten by you will receive the same. If no son or daughter be born, or if there be no probability of its being born to any one of you (then), he will have the right and power of making a gift or sale of these. If any leave only a childless widow, then that childless widow shall have no claim or demand for any share in my real and personal property, &c., and the *debaheba*, and so forth. She shall not be able to make any claim on the plea of my having made a gift to her husband. Being for life under the control of my sons who may be in existence, she shall, for her food, raiment, and other expenses, get interest on Rs. 4,500. No gift and sale, &c., shall be made without providing for this." After which followed certain provisions for his daughters, &c. The will, after appointing one of his sons and three other persons executors, contained in its earlier clause similar provisions to those contained in the earlier part of the deed of gift; it also referred in express terms to a deed of gift. It afterwards went on to make several dispositions, among them the following: "10th section. If no issue be born to any of my sons and his wife survives him, she will enjoy and possess the share of her husband during her lifetime; she will not become vested with the right and power of making gift or sale (thereof). As long as she lives she will live under the control and in the family of such of my sons as shall be alive; those sons will preserve the said property and maintain her. If she remain not under (their) control, then in that case she will have no concern with the said property, (but) during her life she will receive her food and raiment in consideration of her status (in life). All of the surviving sons will get that property in equal shares." "20th section. Besides the property of mine specified in this deed of gift, whatever property will (*i.e.*, may) be acquired after the date of this my will the same shall be taken by my sons in equal shares." "23rd section. The property of which I have made a gift to my sons they shall not be competent to make a sale or gift thereof within twenty years; when there will be any grandsons in the male line they shall get all that property; if any one of them do not have a son, (or) if there be no probability of (his) having a son at a subsequent

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Vested and contingent interests—continued.**

period, he shall have power to make a sale or gift." It appeared that the testator had at the time he executed these instruments, an intention to go on a pilgrimage to Brindaban. *G.* and one of the other executors proved the will; the other executor died in 1844, since which time *G.* remained in possession of the property. *T.* died about 1858 without issue, and his widow *B.* sued the surviving brothers *G.* and *M.* for her husband's share in the estate. This suit they compromised by a payment to *B.* *G.* and *M.* afterwards and within twenty years had issue sons and daughters. In a suit to have the will and deed construed, it was held that, although the deed was not produced when probate of the will was taken out, it was sufficiently proved before the Court in the present suit to allow its being acted on; that the provisions in the will controlled the inconsistent provisions in the deed of gift; that consequently the son's childless widow took her husband's share for life; that the sons having male issue took only a life-interest; that the grandsons during the lifetime of their fathers took nothing, but after the death of their father respectively took among them equally their father's share, the share of each son going to his own son or sons only, and not to grandsons of the testator generally. The restriction on alienation extended to both the moveable and immovable property. *Held*, also, that the widow of *T.*, having received a sum of money from *M.* and *G.* in lieu of *T.*'s share, that share went to *M.* and *G.* in equal shares for life, and on the death of either of them his share would go to his own sons absolutely. *SATGOVIND SHIN v. GOVIND CHUNDER SHIN* . 2 Ind. Jur., N. S., 56

64. ——— *Gift of estate subject to widow's vested interest.—Curtailed enjoyment.*—*V. S.*, a Hindu, died in 1858, leaving a will whereby he appointed *G.* and *S.* his executors to conduct his affairs as directed in the will. After payment of debts, legacies, &c., *G.* and *S.* were directed to manage the residue of estate and not to sell it during the lifetime of *L.*, the junior wife of *V. S.*, to whom a monthly payment for life was to be made by them; after the death of *L.*, *G.* and *S.* were directed to divide the property that remained in equal shares between them and to continue to enjoy the same in equal shares. *L.* survived both *G.* and *S.*, who died in 1875 and 1879 respectively. *Held*—in a suit brought in 1879 by the divided nephew of *V. S.*, against *L.* and the representatives of *G.* and *S.*, to have his right to the estate of the testator, upon the death of *L.*, declared and for an account—that there was no intestacy, and that the gift to *G.* and *S.* did not fail by reason of their deaths in the lifetime of *L.*, but that *G.* and *S.* took a vested interest on the death of *V. S.* *KOLLA SUBRAMAMAIN CHETTI v. THELLANAYAKALU SUBRAMAMAIN CHETTI*

[I. L. R., 4 Mad., 124]

65. ——— *Fund set apart by will for payment of monthly allowances pro-*

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Vested and contingent interests—continued.**

ing insufficient.—Right to supply deficiency from the general estate.—Interest chargeable on property of a testator deposited with a firm.—*C.*, a separated Hindu, died in 1874 possessed of a half share in two dwelling-houses, one situated in Bombay and the other in Kathiawar. He was also possessed of considerable moveable property. He left, him surviving, two widows and one daughter named *J.* By clause 2 of his will, dated 4th July 1874, he directed, as to his share in the houses, that his wives should have a right to reside therein as long as they might live, and, in the event of their decease, that his nephew, *B.*, the son of his brother *V.*, should be the owner; and should the decease of *B.* take place, then whoever might be the son of *V.* should be the owner. By a subsequent clause (the 16th) of his will the testator declared that, should the decease of his two wives take place, all his immovable and moveable property should go to his nephews, *B.* and *M.*, the sons of *V.*, *B.* and *M.*, both died in the lifetime of *C.*'s two widows. *M.* died first childless and unmarried. *B.* left a widow him surviving, who claimed that, under clause 2, *B.* took a vested estate in the testator's share in the two houses, which on his death devolved upon her, and that, under clause 16, *B.* and *M.* took a vested estate in joint tenancy; that on *M.*'s death his interest survived to *B.* and on his death devolved upon his widow. It was contended on behalf of the two widows of *C.*, the testator, that the gift to *B.* by clause 2 and to *B.* and *M.* by clause 16 was contingent, and had lapsed by their deaths; that the result was an intestacy so far as regards the property in question; that they, consequently, took a widow's estate in the immovable property for their lives; and that upon their death the property should go to the testator's daughter, *J.*; and that, as to the moveables, they took absolutely. *Held* that, under clause 2, *B.* took on the death of the testator not a contingent but a vested estate in perpetuity, which on his death devolved on his widow; and that, under clause 16, *B.* and *M.* took a vested interest in joint tenancy in the whole of the residuary estate; that on the death of *M.* the survivor *B.* took the whole absolutely, and on his death his interest was transmitted to his widow. *Held*, also, that the interest taken by *B.* under the above clauses of the will was subject to the right of the testator's widows to reside in the houses, and to have their monthly allowances paid out of the moveable estate, and was subject, also, to the bequests, charitable and otherwise, contained in the will. By clauses 15 and 16 of his will the testator directed that certain monthly allowances should be paid to each of his widows out of the interest of certain Government promissory loan notes which were to be purchased by his trustees. *Held* that, if the particular sources of income, out of which the testator directed these allowances to be paid, should prove insufficient, the rest of the moveable property, or the income derivable from it, as well as the rents of the immovable property, should contribute. The

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Vested and contingent interests—continued.**

funds belonging to the testator's estate had, in accordance with the directions in his will, been kept in the firm of Visram Mowji, in which the testator had been a partner. *Held*, under the circumstances of the case, that the firm should be charged interest at the rate of six per cent. per annum. **JAIRAM NARAYANJI v. KUVERRAI** . I. L. R., 9 Bom., 491

66.**Executor, Estate**

of.—Administrator, Suit by.—Trustees.—Notice.—Charitable Trust.—Parties.—B. K., a Hindu, by his will, executed in Bombay, and dated 6th January 1802, bequeathed a house to his wife, *R.*, for her life, in trust, to allow the impersonations of Valabh to reside in it, and appointed four executors by name, but made no gift over of the house to those executors or to any one else. The will was proved by the four executors on 24th September 1808. On 23rd June 1820, *R.*, claiming as executrix according to the tenor, obtained an order granting probate to her as well as to the executors expressly appointed. The executors retired, and *R.* acted alone in the management of the testator's estate. On 4th September 1862, *R.* sold the house for its full value to the defendant, who had notice of the charitable trust affecting it. *R.* died on 23rd March 1870. On 17th March 1871, the High Court, on the application of one *A. T.*, revoked the probate of *B. K.*'s will granted to *R.*, but without prejudice to any act done in due course of administration by *R.*, and granted letters of administration, *cum testamento annexo* and *de bonis non*, of *B. K.*, to *A. T.* On 18th July 1878, *A. T.* died. On 1st May 1875, the plaintiff, who was the only son and heir of *A. T.*, instituted the present suit for the purpose of recovering from the defendant possession of the trust premises sold to him by *R.* The plaintiff was also one of the surviving heirs of *B. K.*, and by virtue of a release executed to him by the other heirs, was the sole surviving heir who had any beneficial interest in *B. K.*'s estate. The plaintiff, however, did not claim the house in the possession of the defendant as the beneficial owner, but to hold it for the purpose of giving effect to the trust created by the will of *B. K.* On 28th January 1876 the plaintiff obtained letters of administration, *cum testamento annexo* and *de bonis non*, of *B. K.*, and it was on these letters that he now based his claim. *Held*, 1st, that the plaintiff had no ground of action as administrator of *B. K.* *Held*, 2ndly, that independently of the provisions of the Succession Act and the Hindu Wills Act, 1870, which were not applicable to the case, the executors of a Hindu do not, in the character merely of executors, take any estate, properly so called, in the property of the deceased. That, accordingly, on the death of *R.*, the devisees for life in trust, there being no gift of the premises to the executors named in the will, the ownership in the premises would devolve upon the surviving heirs of the testator subject to the trust, and such heirs would accordingly be trustees under or by reason of the will

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Vested and contingent interests—continued.**

of their ancestor, though succeeding to the property in their character of heirs. That the trusteeship thus vesting in all the surviving heirs, the release, though operative to pass the legal estate, so as to vest it in the plaintiff alone, could not vest the trusteeship in him alone, and that accordingly the plaintiff could not maintain this suit unless joined by the other heirs of *B. K.* *Held*, 3rdly, that even if the other heirs of *B. K.* had joined as plaintiffs, still the suit, being one by trustees to disaffirm the completed act of a predecessor against the person claiming by virtue of such act, would not lie. *Semble*,—That as it appeared that the impersonations of Valabh never had availed themselves, and never were likely to avail themselves, of the house, the sale of it by *R.* to the defendant was not a breach of trust. **MANIKLAL ATMARAM v. MANOHARSHI DINSHA** . I. L. R., 1 Bom., 269

67.**Construction of**

will.—Executor's interest.—By the first clause of the will of a Hindu the testator devised all his real and personal estate to his five sons. By a subsequent clause the testator provided as follows: "But should per-adventure any among my said five sons die, not leaving any son from his loins, nor any son's son, in that event neither his widow, nor his daughter, nor his daughter's son, nor any of them, will get any share out of the share that he has obtained of the immoveables and moveables of my said estate. In that event, of the said property, such of my sons and my sons' sons as shall then be alive, they will receive that wealth according to their respective shares. If any one acts repugnant to this it is inadmissible. However, if my sonless son shall leave a widow, in that event she will only receive Company's rupees ten thousand for her food and raiment." *Held*, 1stly, that by the words "not leaving any son from his loins, nor any son's son," the testator meant not an indefinite failure of male issue, but a failure of male issue of any of his sons at the time of the death of that son. 2ndly, that there is nothing in such a devise by a Hindu against public convenience, or generally mischievous or against the general principles of Hindu law. **SOORJEMONEY DASBEE v. DEBOBUNDO MULLICK** . . . 1 Ind. Jur., O. S., 37 [4 W. R., P. C., 114] 6 Moore's I. A., 526

68.**Accumulation.—Direction to**

live jointly.—The meaning of the testator is to be ascertained by the words which he has made use of, having regard to the laws which prevail in India relative to these subjects. A testator directed his sons, using the words "living jointly in respect of food," to take care of and look after his property, moveable and immoveable, and carry on his trading business. *Held* that this interest is not accurately represented by the words "joint estate" in England, nor is it analogous to the case of a testator in England who gives property to executors for the purpose of carrying on his trade,

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.
Accumulation—continued.**

but is more analogous to the tenancy in common which prevails in England. The will also directed that on the death of a son, if that son died leaving a son, the share of that son was to go to that son's son, and if the son dying left no son, that the share should go to the survivors. *Held* that the share of profits made during the joint lives of the sons, which belonged to the deceased son, goes over to the other sons of the testator as they would go according to law, as from a consideration of the various terms of the will itself there was an absence of all directions on the part of the testator to accumulate the profits, or to dispose of the profits which were the property of the son. **FRANKISTO CHUNDER v. BAMASOONDREY DOSSEE** 9 W. R., P. C., 1

S. C. BINSONAUTH CHUNDER v. BAMASOONDREY DOSSEE 12 MOORE'S I. A., 41

69. —Contingent remainders.—*Executory devise.*—There is nothing in the general principles of Hindu law, or public convenience, to prevent a Hindu testator devising self-acquired property by way of remainder, or executory devise, upon an event which is to happen on the close of a life in being. The will of a Hindu testator, after devising all his real and personal estate among his five sons (a joint undivided family), contained this clause: "Should any among my said five sons die, not leaving any son from his loins, nor any son's son, in that event neither his widow, nor his daughter, nor his daughter's son, nor any of them, will get any share out of the share that he has obtained of the immovables and moveables of my said estate: in that event, of the said property, such of my sons and my sons' sons as shall then be alive, they will receive that wealth according to their respective shares. If any one acts repugnant to this, it is inadmissible. However, if any sonless son shall leave a widow, in that event she will only receive Rs10,000 for her food and raiment." The family remained joint. *S.*, one of the sons, died after the testator's death without issue male, but leaving a widow his heiress-at-law. *Held* that, by the words "not leaving any son from his loins, nor any son's son," the testator meant not an indefinite failure of male issue, but a failure of male issue of any one of his sons at the time of the death of that son. *Held*, further, (1) that upon the death of *S.* without male issue his interest in the capital of the estate determined, and that his widow became entitled to hold and enjoy as a Hindu widow a fifth part of the accumulations from the testator's estate, from the time of his death to the death of his son *S.*; and (2) that she was also entitled absolutely in her own right to the interest and accumulations which had since *S.*'s death arisen from such fifth part of the accumulations. By the decree *S.*'s widow was declared entitled to the Rs10,000 given by the will with the benefit of a residence in the family dwelling-house, and participations in the means of worship. The question of the amount of her maintenance as a Hindu widow was left open by the Judicial Com-

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.
Accumulation—continued.**

mittee, as that point could be raised on further directions after taking the accounts. **SOORJEE-MONEY DOSSEE v. DENOBUNDUO MULLICK**

[9 MOORE'S I. A., 123]

70. —Perpetuities.—Trusts.—Absence of disposition of beneficiary interest.—A Hindu by will attempted to create a trust for the accumulation, for 99 years, of the surplus income (after certain yearly payments) of his estate in the purchase of zemindaris, &c., from time to time, and empowered his trustees to continue such trust after the expiration of the 99 years' term. The will contained no disposition of the beneficial interest in the zemindaris so to be purchased. *Held* that such trust was void. *Seemle*,—Perpetuity (save in the case of religious and charitable endowments) is not sanctioned by Hindu law. **ASIMA KRISHNA DEB v. KUMARA KRISHNA DEB** 2 B. L. R., O. C., 11

71. —Trusts.—A Hindu by his will left all his property "in full and absolute right, property, and ownership" (nevertheless upon the conditions and trusts, and with the intent and for the purposes thereafter described), to certain persons named, and "to their successors in the trusts of the settlement thereafter provided," declaring the "trusts and objects" of his said will and settlement, and the "methods, plans, and acts" he desired "to be performed and observed" by such persons and their successors in the trusts. He then desired that all his property should be preserved and held for ever under the trusts, and for the purposes of the said will and settlement. In the second, third, and fourth clauses of the will the testator went on to direct the "executors and trustees" to pay to his sons therein named a certain monthly sum, "such payment to be continued after his decease to his children and descendants *per stirpes*." After directing the executors and trustees to make other payments, &c., in the eighteenth clause he directed,—"With respect to accumulations of money in the hands of the executors and trustees, I direct that the same be converted into such Government or other security as to the executors and trustees may seem best, and that the interest and produce of such security be accumulated and in like manner be invested, and that when and so soon as the aggregate thereof shall amount to Rs3,00,000, it is to be transferred to, and divided among, my sons or the survivors, or survivor, together with the descendants of such of them as may be deceased, *per stirpes*; and as soon as new accumulations arise in the hands of the executors and trustees, that the same be again in like manner divided among my sons then living, or the survivor of their descendants, as before, and so on from time to time." In the twenty-first clause the testator made provision for the appointment of new "executors and trustees," "as it is my intent and desire that the disposition, the conditions, and control I am now devising in regard to the future arrangement and enjoyment of my property be perpetuated." In the Court

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.
Perpetuities—continued.**

below,—*Held, per MARKBY, J.*, that trusts cannot be created by Hindus, but a testator may burden his heir or devisee with a payment of a simple sum of money to a specified person (including an idol) in existence at the death of the testator. Such bequest cannot be held good as a trust created for the benefit of the legatee, but may be treated as creating an ordinary obligation for the payment of money. On appeal,—*Held, per PRACOCK, C. J.*, that trusts have been and can be enforced against Hindus; the trustees in this case take upon such trusts as are valid; so far as they are invalid, the heirs are entitled to the beneficial interest. A Hindu cannot by his will do indirectly by intervention of trusts what he cannot do directly. *Per MACPHERSON, J.*—Both by Hindu law and the practice which has always prevailed in the Courts in India and in the Privy Council, a Hindu may legally deal with his property so as to create a trust, or relation in many respects similar to, although not necessarily identical with, that known in English law as the relation of trustee and *cestui que trust*. Even if trusts are not expressly recognised by the old Hindu law, there is nothing in it forbidding them, or repugnant to them, or inconsistent with their existence. *Held*, both in the Court below and on appeal, that the general scheme of the will failed, because the trusts were intended for an illegal purpose,—namely, for the purpose of creating a perpetuity. *Per PRACOCK, C. J.*—The eighteenth clause is repugnant and void, also bad, because the persons to take were unborn at the time of the testator's death, and on the ground of uncertainty, it being impossible to ascertain at the testator's death who would be entitled to participate in the several divisions of accumulation directed to be made. As to the bequests in the second, third, and fourth clauses of the will,—*Held*, in the Court below, *per MARKBY, J.*, that they could only operate in favour of specified persons in existence at the death of the testator. On appeal,—*Held, per PRACOCK, C. J.*, that they operated as "gifts to the sons for life, with remainders to such children of the sons as were in existence at the time of the death of the testator *per stirpes*." *Per MACPHERSON, J.*—There was a good gift in remainder to the children of such sons as were alive at the time of the testator's death. It is not a violation of the principles of Hindu law to support estates which are to vest on the expiry of a life in being, in a case like the present, where the testator has given his property to trustees who have accepted it, and are prepared to carry out his wishes. Their acceptance would be sufficient if any is necessary. **KRISHNARAMANI DAS v. ANANDA KRISHNA BOSH. ANANDA KRISHNA BOSH v. RAJENDRA NARAYAN DEB**

[4 B. L. R., O. C., 231]

72.

—*Estates-tail.—Gifts inter vivos.—Disinheritance.*—*P. K. T.* died leaving an only son, *G. M.* By his will, after reciting, "I have already made such provision for my son *G. M.* as I consider sufficient,

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.
Perpetuities—continued.**

and he will take nothing whatever under this my will," he devised and bequeathed all his property, both real and personal, unto and to the use of *E. N., U. M., J. M., and D. P. M.* (thereafter called the trustees), their heirs, executors, &c., according to the nature and tenure of the property to have and to hold upon the trusts thereafter declared, that is to say, as regards personalty, upon trust to collect and get in the same and thereout to pay his funeral expenses and debts and such legacies as might be payable in the ordinary course of administration within one year from the testator's death; after paying the funeral expenses, debts, and legacies, upon trust to sell and convert into money such portion of the personal estate as should remain unexpended, and not consist of money or security for money, and to vest the proceeds on good securities; and out of the annual income of the whole upon trust to pay the annuities given by the will and also any of the legacies so far as it would suffice, and after payment of the legacies and annuities to pay the surplus unexpended unto the person or persons for the time being entitled to the beneficial enjoyment of the real property, or of the rents and profits or surplus rents and profits thereof; and so soon as all the annuities and legacies should have fallen in and been fully paid and satisfied, in trust absolutely for the person or persons entitled to the beneficial or absolute enjoyment of the real property. As regards realty, upon trust, until all the debts and legacies had been paid and all the annuities had fallen in and been fully satisfied, to receive and collect the rents, issues, and profits thereof, and thereout in the first instance to pay such (if any) of the legacies and annuities as the personal estate or income derived from the trust-money and securities should be inadequate to defray, and to pay the residue to the person or persons for the time being to whom the real estate is devised, for the absolute use of such person or persons respectively. The testator then desired the trustees to hold the real estate generally for the use and benefit of such last-mentioned person or persons for the time being, so far as was consistent with the trusts and provisions of the will; and further, he directed that out of the net annual income the person entitled to the beneficial enjoyment of the real property or of the income or surplus income thereof should receive for his own use every year, *Rs. 500 a month or Rs. 6,000 a year*, and that the various legacies and annuities should only be paid gradually and as found possible by the trustees out of the balance remaining out of the last-mentioned payment; and so soon as all the legacies and annuities had fallen in or been paid or fully satisfied, then in trust forthwith to convey the real estate unto and to the use of the person entitled to the beneficial interest therein with and subject to such and the like limitations, provisions, and directions thereafter contained and expressed of and concerning "the real estate," so far as the then condition of circumstances will permit, and so far as such limitations and directions can be introduced into any deed of conveyance or settlement without infringing

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.**
Perpetuities—continued.

ing upon or violating any law against perpetuities which may then be in force and apply to the real estate or the conveyance or settlement of it as last aforesaid (if any such law there be). The testator then desired that all the gifts, devises, and limitations in his will thereafter contained should be read and taken as subject to the devise and bequest thereinbefore made to the trustees and the various provisions and declarations made by him with reference thereto. The testator devised all his real property (subject to the before-mentioned devise to the trustees) "unto and to the use of *J. M.* for the term of his natural life, and from and after the determination of that estate, to the use of the eldest son of *J. M.* born during the testator's life for the life of such eldest son; and after the determination of that estate, to the use of the first and other sons successively of the eldest son of *J. M.* according to their respective seniorities, and the heirs male of their respective bodies issuing successively; and upon the failure or determination of that estate, to the use of the second and other sons of *J. M.* born during the testator's life, successively according to their respective seniorities; and upon the failure or determination of that estate, to the use of the first and other sons successively of such second or other sons of *J. M.*, and the heirs male of their respective bodies issuing, so that the elder of the sons of *J. M.* born in the testator's lifetime, and his first and other sons successively, and the heirs male of their respective bodies issuing, may be preferred to and taken before the younger of the sons of *J. M.* born in the testator's lifetime, and his and their respective first and other sons successively, and the heirs male of their respective bodies issuing. And after the failure or determination of the uses and estates thereinbefore limited, to the use of each of the sons of *J. M.* who should be born after the testator's death successively according to their respective seniorities, and the heirs male of their respective bodies issuing, so that the elder of such sons and the heirs male of his body may be preferred to and taken before the younger of such sons and the heirs male of their and his respective bodies issuing." On failure of these estates, there were similar limitations to other members of the testator's family and their sons, sons' sons, &c. Further, the testator declared his will and intention to be "to settle and dispose of the estate in manner aforesaid as fully and completely as a Hindu born and resident in Bengal may give or control the inheritance of his estate, or a Hindu purchaser may regulate the conveyance or descent of property purchased or acquired by him, and not subject to any law or custom of England, whereby an entail may be barred, affected, or destroyed; provided always, and I hereby declare, that if any devise or tenant-for-life, or in tail, or otherwise, or any person entitled to take as heir by descent or adoption or otherwise in any manner, under the limitations hereinbefore contained, shall permit or suffer the property so devised, &c., to be sold for arrears of Government revenue, &c., then and imme-

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.**
Perpetuities—continued.

diately thereupon the devise and limitations in this my will declared and contained shall wholly cease and determine as to him," &c. Finally, he appointed the trustees executors of his will. *J. M.* had no son born during the life of the testator. *G. M.*, the son of the testator, sued to have the will set aside except as regards the payment of debts, legacies, and annuities. He also charged the executors with waste, and asked for an account. *Held*, both in the Court below and on appeal, that the devises were not void, merely upon the ground that the estates were devised upon trust, and that the testator had power to create by means of a devise to trustees such estates and beneficial interests as he could have created without the intervention of trustees. But the entails intended to be created by the will were void, estate-tail being wholly opposed to the general principles of Hindu law. The plaintiff could not claim maintenance, sufficient provision having been previously made for him by his father. *Held*, in the Court below, that although the testator could not create an estate-tail, yet as it is clear that he intended to dispose of the whole inheritance, the devise must be construed as amounting to the creation of several successive life-interests, each commencing on the termination or the failure of the preceding, the whole completed by the gift of the entire estate of inheritance to take effect on the expiration of the last life-interest. The first series of such devises is not bad for remoteness, for there is nothing in Hindu law to prevent a testator from making a gift of property to an unborn person, provided the gift is limited to take effect, if at all, immediately on the close of a life in being; therefore, as concerns only the succession of gifts for life only to *J. M.* and his sons, terminated by the absolute gift of the inheritance to an unborn person, the will is unimpeachable, because each of these gifts must take effect, if at all, at or before the close of a life in being; and the like conclusion would hold with regard to each of the other series of devises taken alone; but taken in the aggregate they may violate the rule against perpetuities; but the first series could not be affected by this, and therefore as long as it stands the plaintiff has no claim to a decision of the Court upon the validity of a devise which is subsequent in order of time. The plaintiff's suit must be dismissed. He is not entitled to immediate relief of any kind. *Held*, on appeal, that the devise to *J. M.* was valid, though it created only a life-estate. The intention of the testator was that *J. M.* should take an immediate vested beneficial interest in the real estate, subject to the charges for payment of legacies, annuities, &c., and in the Rs2,500 a month. The devise to *J. M.* was not bad for uncertainty. But the devises of estates-tail must be rejected as void, and cannot be converted by the Court into devises creating larger estates than the testator intended. The words of the devise cannot be construed to pass a general and absolute estate. As *J. M.* had no sons born in the lifetime of the testator, the devise to the use of the first and other

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.
Perpetuities—continued.**

sons successively of the eldest son of *J. M.* lapsed. By Hindu law a gift cannot operate to pass property unless the donee is in existence, so that as soon as the property is relinquished, and passes out of the donor, it may vest in the donee. That in the case of a will would be at the time of the death of the testator, from which moment the will operates as a relinquishment (except in the case of a posthumous child of the testator or a son adopted by the widow of a testator). Therefore the devise to the sons of *J. M.* to be born or adopted after the death of the testator are not valid according to Hindu law. The gift to trustees does not cure the invalidity, for the law will not permit that to be done indirectly which cannot be lawfully done directly. The gift of the personality fails because of the want of certainty at the time of the death of the testator, who would be the donee, and whether the donee was a person in existence or not. The gift over of the *corpus* of the personality after the payment of the legacies and annuities was bad, and consequently the property in it is vested in the son and heir of the testator subsequently to the trusts for the payment of debts, legacies, and annuities, &c. But the right to receive the surplus rents and profits of the real estate and of the interest and dividends of the personality, if there be any, is vested in *J. M.* for life, or until the time arrives for the conveying of the real estates, and the vesting of the *corpus* of the personality. The heir-at-law cannot be disinherited by words expressing that he is not to take any benefit under the will. He will take by descent, by his right of inheritance, whatever is not validly disposed of by the will. Subject to the trusts for payment of the funeral and testamentary expenses and of the debts, legacies, and annuities, the plaintiff, as the heir-at-law of the testator, is entitled (notwithstanding the will) to a general estate of inheritance in reversion to the immoveable property of the testator, and by the terms of the will no estate larger than an estate for life has been validly created, and there is a resulting trust in the plaintiff's favour. The plaintiff is not entitled to a declaratory decree against the unborn sons of *J. M.* or the subsequent unborn devisees. The plaintiff is entitled to have the question of waste tried. He is also entitled to have an account of the moneys and securities which have come into the hands of the trustees, and to see how they have been applied. **GANENDRA MOHAN TAGORE v. UPENDRA MOHAN TAGORE**

[4 B. L. R., O. C., 108]

Held by the Privy Council on appeal. In construing transfers by gift among Hindus, a benignant construction is to be used, and the donor's intentions carried out, if ascertainable, to the extent and in the form which the law allows. Thus, if an estate be given by a Hindu to *A.* without words of inheritance, it will, in the absence of a conflicting context, give an estate inheritable as the law directs; if to it be added an imperfect description of it as a gift of inheritance not excluding the inheritance imposed by law, an estate of inheritance would pass; if a gift be

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.
Perpetuities—continued.**

in terms of an estate inheritable according to law, with superadded words restricting the power of transfer which the law annexes to that estate, the restriction is to be rejected; if a gift be to *A.* and his heirs to be elected from a line other than that specified by law, and expressly excluding the legal course of inheritance, the gift is only good so far as consistent with the law—*A.* would take a life-estate, and the other limitations would fail. All estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance, are void as such, and by Hindu law no person can succeed as heir to estates described in terms which in English law would designate estates-tail. In order to make a gift under a will good by Hindu law, the donee, except in the case of an adopted child, or a child *en ventre sa mere*, must be a person in existence, capable of taking at the time when the gift takes effect. A child adopted after a man's death in pursuance of a power given by him is in contemplation of law begotten by that man. The law of wills among Hindus is analogous to the law of gifts; and even if wills are not universally to be regarded in all respects as gifts to take effect upon death, they are generally so to be regarded as to the property which they can transfer, and the persons to whom it can be transferred. A person capable of taking under a will must be such a person as could take a gift *inter vivos*, and, therefore, must, either in fact or in contemplation of law, be in existence at the death of the testator: *Soorjeemoney Dosses v. Denobundoo Mullick*, 9 Moore's I. A., 123, distinguished. Trusts are not unknown to Hindu law; they can be created for carrying out such intentions as the law recognises. There is no reason why a Hindu should not by will create an estate for life. Where the testator left his property to *A.* for life with remainders, showing that *A.* should have no more than a life-estate, but that the testator wished to tie up the estate by provisions in tail,—*Held*, *A.* could not be declared entitled to more than a life-estate. Where a testator directed his property to go in a certain way on the "failure or determination" of estates created by him, it was held that such words contemplated the fact of those estates being legal and valid; and that as they were illegal and invalid, no effect could be given to the directions as to the further devolution of the property. The will directed that, as to the personality, the trustees were, after all annuities and legacies had fallen in and been satisfied, to stand possessed of, and interested in, the *corpus* in trust absolutely for the person or persons entitled under the limitations in the will to the beneficial or absolute enjoyment of the real property. The High Court gave the tenant-for-life the surplus of the interest remaining in the hands of the trustees after payment of the legacies and annuities, but excluded him from any right to the subsequently accruing interest. *Held* that he was entitled to the interest of the personality after such falling-in and satisfaction. Where a son had received as a gift from his father property producing

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Perpetuities—continued.**

at the time ₹7,000 a year, their Lordships, without deciding whether a son could be deprived of maintenance, considered that he had received an adequate maintenance. All the existing parties interested in a will being before the Court, a decree can be made as to the rights of all parties. *Lady Langdale v. Briggs, 8 De Gez, M. & G., 391*, distinguished. *JOTINDRA MOHAN TAGORE v. GANENDRA MOHAN TAGORE. GANENDRA MOHAN TAGORE v. JOTINDRA MOHAN TAGORE*

[9 B. L. R., P. C., 377: 18 W. R., 359]

73. ——— Bequest to a class.—Void residuary bequests.—Trusts for maintenance and religious trusts.—Perpetuities.—A testator by his will directed as follows: "To my daughter A. B. I give the interest on a Government promissory note for ₹3,000, to be paid to her, as the same becomes due, during her life, and if at her death there be any male issue of hers living I give the said promissory note, to be divided equally among them if more than one, and if there be no such male issue living at the death of the said A. B., the said security for ₹3,000 shall thereupon fall into the general residue of my estate." He also directed, after having bequeathed five, "one-sixth share shall be retained by my executors, and the income thereof accumulated and invested in Government securities until the son or sons of my eldest son H., if he shall have any son, shall attain full age, and shall thereupon be paid to such son or sons, if more than one, in equal shares . . . and in case no son be born of my said eldest son, or no son shall attain full age, then such one-sixth share shall, on the death of the said H., be divided equally among such of my five other sons as shall then be living and the male issue of such of them as shall then be dead, such male issue taking the share of their respective fathers." Then, after reciting that he was desirous of making, out of his immovable property, a permanent provision for the benefit of his five younger sons and their male descendants, and that he was desirous of having the due forms of worship carried out after his death, he further directed that certain lands should be held by his executors on trust, to apply the rents and profits (1) in the celebration of certain poojas and in the performance of periodical turns of worship of the family thakoor and other religious festivals, at the same expense and in the same style as the testator himself had done, or at such expense and in such style as the executors should think fit; and (2) in the maintenance out of the surplus of the five younger sons, their wives, sons, and male descendants, and female descendants until their marriage. *Held* that the bequests to the children of the daughter and to the children of H. were void. *CHUNDER MONEE DASSEE v. MOTILALL MULLICK* . . . 5 C. L. R., 496

74. ——— Remoteness.—Applicability of English rules to Hindu wills.—A Hindu testator died in 1837, leaving four sons and two grandsons by a deceased son. By his will, dated

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Bequest to a class—continued.**

in 1837, after directing that his property should be divided into five shares, of which his four sons were to take one each, and his two grandsons the remaining one, the testator made the following devise: "On the death of any or either of my said four sons, or of the said R. D. and M. D. (his grandsons) leaving lawful male issue, such male issue shall succeed to the capital or principal of the share, or respective shares, of his or their deceased father or fathers, to be paid or transferred to them respectively on attaining the full age of 21 years; but if any or either of my said four sons shall die without leaving any male issue, or if he or they shall die leaving such male issue, and the whole of such issue shall afterwards die under the age of 21 years, and without male issue, in such case the share or shares of my said sons so dying shall go to and belong to the survivors of my said sons and my said two grandsons for life, and their respective male issue absolutely after their deaths in the same manner and proportion as is hereinbefore described respecting their original shares." U., one of the sons, died in 1853, leaving an only son S., born in the lifetime of the testator, who died shortly after his father intestate, and without male issue. In a suit by the widow of S. claiming as his heir and representative to recover the share of U. as having descended to S. absolutely, and to obtain partition,—*Held* that, inasmuch as U. survived the testator, the gift to the male issue of the testator's sons was void for remoteness as including objects who might have come into existence after the testator's death, and therefore be incapable of taking. The rule that where there is a gift to a class, and some persons constituting that class cannot take in consequence of remoteness, the whole bequest must fail, as well as the principle of the English Courts in deciding questions of remoteness, that regard is to be had to possible and not to actual events, is applicable to the interpretation of the wills of Hindus. The gift to the male issue being void, the subsequent limitations were also void. S., therefore, and through him the plaintiff, was entitled to a share in such part of the testator's estate as by reason of the invalidity of the gifts in his will was undisposed of. *SUDAMONEY DOSSEE v. JOGESH CHUNDER DUTT* [I. L. R., 2 Calo., 262]

75. ——— Class of whom some only are in existence.—A bequest by a Hindu to a class of persons, some of whom are not in existence at the date of testator's death, is wholly void; and the fact that some of the class are then living and capable of taking, will not enable the class to open out and let in any after-born members of the class. *KHERODEMONEY DOSSEE v. DOORGAMONEY DOSSEE* . . . I. L. R., 4 Calo., 455

[2 C. L. R., 112: 3 C. L. R., 315]

But see *RAMLAL SETT v. KANAI LAL SETT*

[I. L. R., 12 Calo., 663]

and *RAI BISHEN CHAND v. ASMAIDA KOER*

[I. L. R., 6 All., 560: I. R., 11 I. A., 164]

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****76. ——— Remoteness.—“Descendants.”**

—Bequest creating series of life interests.—Under a bequest by a Hindu of ₹10 per month, followed by a direction to the following effect: “In this manner continue to pay in the legatee’s name so long as he shall be alive; after his death continue to pay the same to his descendants from generation to generation.”—*Held, 1st*, that the legatee took only a life-interest under the bequest; *2nd*, that the words “from generation to generation” did not import more than what “absolutely” and “for ever” import in an English instrument; *3rd*, that the descendants in existence at the time of the tenant-for-life’s death took absolutely as a class; and *4th*, that such descendants were entitled in equal shares to an amount sufficient to produce the monthly sum of ₹10. Remarks on the construction of Hindu wills. “Descendants” of the testator in a Hindu will would include children and grandchildren living at his decease, but not the testator’s brother or widow. There is no rule of Hindu law imposing any restriction in point of time on the operation of a bequest creating a series of successive life-interests in each generation of a legatee’s descendants; but, *semble*, the grounds of the rules against perpetuities are applicable to the property of Hindus, and the Court will be very reluctant to construe a Hindu will so as to tie up property for an indefinite period. **ARUMAGAM MUDALI v. AMMI AMMAL**. 1 Mad., 400

77. ——— Estate tail.—

Accumulation.—A Hindu, by his will, directed that his estate should remain intact, and that the profits should be applied, in the first place, towards performing religious duties; and he provided that his immovable property, business, and the capital stock thereof should also remain intact, and that his heirs, sons’ sons, and great-grandsons in succession, should be entitled to the profits, no person having any right of alienation. The testator then provided that his eldest son should act as manager and shebait, and prepare accounts; and that he should have no power of alienation. He then made provisions for the payment of Government revenue, and declared that, of the surplus profits, six sixteenths should be applied, in part, towards the worship of his ancestral deities, and the residue towards the maintenance of all the members of the family, and religious ceremonies; the remaining ten sixteenths to be carried to the credit of his estate. In case of dispute between his eldest son and the testator’s third wife, the mother of the testator’s minor children, the testator directed that his eldest son should receive five sixteenths of the ten annas share; if another son should be born of the testator’s third wife, the remaining eleven sixteenths was to go to her sons. If no son was born, then the eldest son was to take five and a half sixteenths, and the sons of the third wife the remaining ten and a half sixteenths, absolutely, as long as the family remained joint; the expenses of the *debatheva* and maintenance of the family were to be defrayed from the six annas share. In case of separation, the shares of the sons were to be placed to their respective credits every year, each son on attaining majority

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Remoteness—continued.**

to be entitled to his share. The testator then provided that, in case of separation, his sons (with the exception of the landed properties and capital stock of the business, and the articles used by the idols) should be at liberty to take the moveable property absolutely according to the conditions laid down for the division of the ten annas share of the profits. He then provided for the maintenance of his third wife and minor sons out of the six annas share, each son on attaining majority to be entitled to his share under the will absolutely. After providing that his sons should live in his ancestral dwelling-house, but that none of them should have any power of alienation, the testator directed that, if any of his heirs died without male issue, the widow of such heir should receive maintenance only, and that his grandson by a daughter should get nothing, but his share should go over to the surviving sons. The testator finally directed that his eldest son, son’s grandsons, and other heirs in succession, should perform the duties of kurta and shebait. In a suit by the widow of one of the testator’s sons by his third wife, seeking to recover such a share of the testator’s property as she would have been entitled to in case of intestacy,—*Held* that the intention of the testator, in disposing of the profits of the six annas share, was not an intention to create a valid estate in the *corpus* in favour of any individual, but to tie up such *corpus* and to give the profits only to his male descendants; or, in other words, to create a sort of estate in tail male in the profits, and that the bequest was void. *Held* also that the disposition of the ten annas share of the profits was void, there being in one event a direction to accumulate for ever without a disposition of the profits; and in the other event, the gift was void for the same reasons as the gift of the six annas share. *Held* further, that the disposition of the family dwelling-house, save in so far as it prohibited alienation, was good, and that there was a sufficient disposition of the moveable property. **SHOOKMOY CHUNDER DASS v. MONOHARI DASI**. I. L. R., 7 Calc., 269 [8 C. L. R., 473]

Held on appeal by the Privy Council, affirming this decision, that the Hindu law does not allow such a disposition of property as would have been made by a testator whose intention was to give to his descendants the profits only of his estate for their benefit, and for the maintenance of religious services, but not to dispose of the estate itself. *Held* that, according to the true construction of the will taken altogether, the testator’s intention was not to pass the estate. This was confirmed by the clauses against alienation, and for the accumulation, as long as the family should remain joint, of a certain share of the profits; another portion being assigned for the religious services. This was not a case in which a testator, having expressed an intention that his estate should pass, had added a clause against alienation, in which case the latter clause would have been merely void. *Held*, accordingly, that this bequest was in-

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Remoteness—continued.**

valid. An account of the profits of the estate, from the date of the death of the testator, having been ordered by the decree of the Court below, in favour of the inheritor of a share at whose instance the bequest was held invalid.—*Held* that this did not mean that enquiry should be made into the different payments by the manager for the time being, or moneys taken out by the members of the family, but that it should be ascertained to what portion of the savings of the family, or of the accumulations made, such sharer would be entitled; and that this order was accordingly correct. **SHOOKMOY CHUNDER DASS v. MONOHARI DASI** . . . **I. L. R., 11 Cal., 684**
[**L. R., 12 I. A., 103**

78. ————— Perpetuities.—Trusts for worship.—Recital in will as to intention to create perpetuity.—The testator by his will, dated 24th December 1873, which recited that he was desirous of disposing of his moveable and immoveable estate, so as to ensure a perpetual income for the worship of the family idols, and the maintenance of his heirs, after making provision for his funeral and shradh, and for the payment of a pecuniary legacy, gave and bequeathed all his moveable estate to the Official Trustee of Bengal for the time being, on trust out of the income to pay over the same to the trustees of the will, to whom he devised and bequeathed all his immoveable estate and the income of his moveable estate in the hands of the Official Trustee on trust for the maintenance of the family idol, subject to the following trusts:—In the first place, out of the income of the moveable estate, to keep all the houses in the trust premises in repair; in the second place, to suffer his two widows, *K.* and *L.*, with their children and families, to reside in the family dwelling-house, during their lives, and on their deaths to suffer all his heirs, according to the Hindu law of succession, to reside in such house for ever; in the third place, to pay out of the moveable estate to his wife *K.* monthly **Rs** 5 during her natural life, and to her children monthly **Rs** 5, during the same period, and on her decease to her children and their heirs according to Hindu law, monthly **Rs** 100 for ever, for their support and maintenance. (Similar trusts in favour of *L.* and her children followed.) The residue of the income of the moveable estate was directed to be paid, by moieties to the widows, and on the death of each, her share was to be given to her issue in the same way as the other sums were directed to be paid to them respectively. *Held* that the recital as to the testator's desire to establish a perpetuity did not invalidate the subsequent trusts, so far as they were otherwise good according to law; that the trust for the repair of the house was valid during the lives of the two widows and the survivor of them; that the trust to allow the two widows and their families to occupy the family dwelling-house was a trust for the widows and no one else, empowering them with their families and any others whom they might choose to make members of their families to reside in the house; that the trust

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Remoteness—continued.**

to allow the testator's children, and their heirs on death of the widow, to occupy the house was void; that the wives were entitled to **Rs** 5 monthly, and the children of each, during the lives of their respective mothers, to **Rs** 5, equally; that the trusts to pay **Rs** 100, monthly, to the children of each of the widows, on their respective deaths for ever, was void; that the gift of the residue to the widows in moieties was valid for their respective lives, but the gift to their issue on their respective deaths invalid, and that the trust for the worship, subject to the other trusts, so far as they were valid, was good. **KALLY PROSONO MITTER v. GOPPE NATH KUR** . . . **7 C. L. R., 241**

79. ————— Bequest void for remoteness.—A Hindu testator died possessed of considerable property, and leaving a will, dated 12th September 1870, by which he appointed his wife executrix in the following words:—"I appoint my wife, *A. D.*, executrix on my behalf, and vest her with entire authority and responsibility. After my decease my said wife shall perform all duties according to my instructions embodied in the following paragraphs. [After reciting that his wife was a purda woman, and that his three sons were disobedient and extravagant, he appointed certain persons managers to perform certain duties under the will which could not be performed by a purda woman: and after various minor bequests and directions, he directed that if it should appear to the executrix or executors for the time being that they would not be able to protect the property, then they should form a family fund in the Government Trust Fund of all the property, and that the interest thereof should be employed in the performance of certain religious ceremonies and the family expenses, and then bequeathed as follows]:—"Whatever Company's paper, moveable and immoveable property, &c., shall be formed into a family fund in the Government Trust Fund, my great-grandsons shall, when they attain majority, receive the whole to their satisfaction, and they will divide and take the same in accordance with the Hindu law. God forbid it, but should I have no great-grandsons in the male line, then my daughter's sons, when they are of age, shall take the said property from the Trust Fund and divide it according to the Hindu shastras in vogue." The testator, left living, at the time of his death, one son's son, three sons, and a daughter and her sons, but no great-grandson. *Held* that the bequest to the great-grandsons was void and inoperative for remoteness, that the bequest to the daughter's sons was dependent on, and not alternative to, the gift to the great-grandsons, and therefore a bequest void under section 103 of the Succession Act. *Held*, also, that *A. D.* was invested under the will with only a representative character, and was therefore not entitled beneficially to any residue of the estate as against parties who might have any interest therein. **BRAJANATH DRY SIKAR v. ANANDAMAYI DASI**
[**8 B. L. R., 280**

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Remoteness—continued.**

80. ————— Male issue.—Gift to unborn person.—Bequest void for Remoteness.—Where a testator directed in his will that (1st) "on the death of either of my four sons leaving lawful male issue, such issue shall succeed to the capital or principal of the respective shares of his or their deceased father or fathers, to be paid or transferred to them respectively on attaining the full age of twenty-one years; (2nd), if either of my four sons shall die leaving male issue and the whole of such issue shall afterwards die under the age of twenty-one years and without male issue, the share or shares of the sons so dying shall go and belong to the survivors of my said sons and to my two grandsons (named in the will) for life and their respective male issue absolutely after their death; and (3rd), on the death of either of my sons without leaving any male issue his share is to go and belong to the survivors of my said sons and my two grandsons (named in the will) for life, and their respective male issue absolutely after their death in the same manner and proportions as hereinbefore described respecting their original shares; it was held: 1st—That a vested interest was conferred upon the issue immediately upon the death of the father. The expression "to be paid or transferred to them respectively on attaining the age of twenty-one years" was a mere attempt to defer the period of payment to, or enjoyment by, such issue. 2nd—That the gift over was void, because the event on which it was to take effect might be indefinitely remote, even if the words "male issue" be construed as meaning sons. The meaning of "male issue" is not confined to sons alone. 3rd—That in accordance with the ruling in *Ganendra Mohan Tagore v. Upendra Mohan Tagore*, 4 B. L. R., O. C., 108, a gift by a Hindu to a person not ascertained or capable of being ascertained at the time of the death of the testator cannot take effect; therefore, the gift to the unborn male issue of the sons and grandsons of the testator must fail. Where there is a gift to a class, and some persons constituting such class cannot take in consequence of the remoteness of the gift or otherwise, the whole bequest must fail. Held also, in accordance with *Ganendra Mohan Tagore v. Upendra Mohan Tagore*, 4 B. L. R., O. C., 108, that a Hindu cannot, under any circumstances, make a gift by will to an unborn person or persons. *BRAMAMAYI DAS v. JAGES CHANDRA DUTT* . . . 8 B. L. R., 400

81. ————— Gift void for remoteness.—Where a will gave the testator's widow permission to adopt and made provision for the adopted son entering into possession after her death, providing further that if the adopted son died unmarried, the estate should pass to the testator's nearest sapinda gyanti.—Held that the gift or bequest was, according to the doctrine laid down by the Privy Council in the *Tagore case*, 9 B. L. R., 377, void and of no effect, because the nearest sapinda was a person who might not be in existence at the death of the testator,

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Remoteness—continued.**

being one who could not be ascertained at that time. *RAMGUTTEE ACHARJEE v. KRISTO, SOONDURER DEBIA* [20 W. R., 472

82. ————— Hindu Wills Act (XXI of 1870), ss. 2, 3, and 6.—Succession Act (X of 1865), ss. 98, 99, and 101.—Gift to unborn persons.—A Hindu testator, by his will made in 1872, provided that should he never have a son, his daughter's sons, when they came to years of discretion, should receive certain properties in equal shares; and he directed that, if his daughters had no sons, or should not be likely to have sons, then that such of his daughters as should reside in the ancestral family dwelling-house should receive a certain monthly allowance. The testator died in 1873, leaving only his daughters him surviving. Held that the will being governed by the Hindu Wills Act, the bequest to the daughters' son was valid. The rule of construction laid down in the *Tagore case*, 9 B. L. R., 377, does not apply to wills of Hindus made since the passing of Act XXI of 1871. The words "create any interests," in the last proviso to section 3 of the Hindu Wills Act, should be read as referring only to the estate or interest which can be given, without reference to the further question to whom it can be given. *ALANGAMONJORI DABEE v. SONAMONI DABEE* [I. L. R., 8 Cal., 157; 9 C. L. R., 121

Held, on appeal, a gift by will to persons unborn at the time of the death of the testator, whether made prior or subsequently to the passing of the Hindu Wills Act, is void. The words "to create an interest," in the fifth proviso to section 3 of the Hindu Wills Act, apply both to the quantity and quality of the interest created, and in their natural and ordinary meaning include the capacity of a donee to take. *ALANGAMONJORI DABEE v. SONAMONI DABEE* [I. L. R., 8 Cal., 637; 10 C. L. R., 459

83. ————— Gift to grandsons after death of annuitants.—Vesting, Postponement of.—Inconsistent declarations rejected.—A testator, after charging certain annuities and other payments on his estate, gave the whole of his property to his grandsons in these words:—"I give the whole of my property to my grandsons; but until those portions of the said property and the monthly stipends which I have given to some to enjoy for the natural term of their lives shall revert to the estate after their deaths, my estate shall not be divided amongst any of my grandsons or my great-grandsons. After all the pensioners have died, and after the enjoyment of the said pensions and property shall have ceased, the executor's powers shall be annulled, and then my grandsons and my grandsons' heirs—that is to say, my great-grandsons—shall be able to divide the whole of the property and take their fathers' shares." He further directed that, for five years after his death, his family should remain joint, and allowed to his executors Rs400 for family expenses. Held that the will contained sufficiently direct words

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Remoteness—continued.**

of present gift to the grandsons, and that the clause in which it was attempted to postpone the enjoyment in possession, and other clauses which directed accumulation, must be rejected or disregarded as inconsistent or repugnant. *Held* also that the fact that the estate was subject to partial trusts or charges did not postpone the vesting in possession; nor would it, even according to English law, let in grandsons of the testator born after his death during the continuance of the trusts. *Alangamonjori Dabee v. Sonamoni Dabee*, I. L. R., 8 Cal., 637, discussed by PONTIFEX, J. KALLY NATH NAUGH CHOWDERY v. CHUNDER NATH NAUGH CHOWDERY

[I. L. R., 8 Cal., 578 : 10 C. L. R., 207

84. ———— Bequest excluding legal course of inheritance.—*Gift ineffectual so far as it departs from the law of inheritance.*—*Gift over of accrued share.*—A testator gave by his will to three sons of his brother certain estates "for payment of the expenses of their pious acts." He also directed as follows: "The said three nephews shall hold possession of the above in equal shares, and shall pay the Government revenue of the same into the Collectorate. They shall have no right to alienate the same by gift or sale, but they, their sons, grandsons, and their descendants in the male line shall enjoy the same, and shall perform acts of piety as they respectively shall think fit for the spiritual welfare of our ancestors. If any die without leaving a male child, which God forbid, then his share shall devolve on the surviving nephews, and their male descendants, and not on their other heirs." In a suit between the survivor of the three nephews and the testator's heir,—*Held* by the High Court, a gift by will upon condition that the subject-matter should descend to heirs male only, is void by Hindu law. *Held* also, that the gift was bad in so far as it restricted the subject-matter of the gift to male descendants, but that the language used relating to the gift over to the testator's surviving nephew or nephews, was not inconsistent with the intention of the testator that the whole augmented share should pass to the plaintiff, the sole surviving nephew; but that, having regard to the doctrine frequently acted upon by the Courts of India, he was only entitled to a life-estate therein. *SHOSHI SHIKHUESSUR ROY v. TAROKESSUR ROY* . I. L. R., 6 Cal., 421

Held, on appeal by the Privy Council, that a gift by will, attempting to exclude the legal course of inheritance, is only effectual, in favour of such person as can take, to the extent to which the will is consistent with the Hindu law; and it is a distinct departure from that law to restrict the order of succession to males excluding females; that the attempt to alter the legal course of inheritance failed, and that the estate taken under the above clause was only for life. The gift over of a life-estate was competent: it being to persons alive, and capable of taking on the death of the testator, and to take effect on the death of a person or persons then alive. On the death of one brother his

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.****Bequest excluding legal course of inheritance—continued.**

share went to the two other brothers, and on the death of one of the latter his augmented share, made up of his original and accrued share, went to the survivor. *TAROKESSUR ROY v. SOSHI SHIKHUESSUR ROY. SOSHI SHIKHUESSUR ROY v. TAROKESSUR ROY* [I. L. R., 9 Cal., 952 : 13 C. L. R., 62 L. R., 10 I. A., 51

85. ———— Use of words "putra poutradi krame."—*Condition subsequent.*—In a will, the words "*putra poutradi krame*," recognised as apt for conveying an estate of inheritance, do not limit the succession to male descendants and will include female heirs of a female, where by law the estate would descend to such heirs. The will of a Hindu, who died, leaving only a widow, a daughter's daughter, and a brother, directed as follows:—"7. If no daughter or daughter's son of mine should be living at the time of the death of my wife, then my grand-daughter (daughter's daughter) shall become the proprietress of my property, and shall remain in undisputed possession thereof, '*putra poutradi krame*.'" "8. If the death of my wife should take place before my daughter's daughter arrives at majority and bears a son, then the whole of the estate shall remain in charge of the Court of Wards until she arrives at majority and bears a son." "9. If my daughter's daughter should be barren or a sonless widow, or if she should be otherwise disqualified, she shall not become entitled to my property, but shall receive an allowance of Rs300 per mensem for her life." "20. If no son or daughter should be born to me, and if my daughter's daughter should die before she bears a son, or if she should be barren or become a sonless widow, or be otherwise disqualified, then the whole of my properties shall pass into the hands of the Government." The will further directed the use of the money by the Government in that event, for certain charitable purposes. In an administration-suit brought by the Secretary of State in Council against the testator's brother, wife, and grand-daughter, for the carrying out of the trusts of the will,—*Held* that clause 7, if it stood alone, would confer an absolute estate on the daughter's daughter on the death of the widow; that the disqualifications in clause 9 must come into operation, if at all, at or before the death of the widow; and that it was unnecessary to decide whether, if they had been conditions subsequent, they would or would not have been in violation of Hindu law; that clause 20 was supplementary to clause 9, and that by it the gift over to the Government was to take effect, if at all, immediately upon the widow's death in the event of the granddaughter dying before her without having borne a son, or in the event of the granddaughter being disqualified at the date of such death. One possible event not having been provided for by the will, *viz.*, that of the granddaughter predeceasing the widow, having borne a son, their Lordships did not decide what would happen on the occurrence of

HINDU LAW—WILL—continued.**5. CONSTRUCTION OF WILLS—continued.****(b) SPECIAL CASES OF CONSTRUCTION—continued.**

Use of words "putra poutradi krame"—
continued.

that event. The rights of a son yet unborn would not, in the case supposed, be affected by any judgment in these proceedings. *Lady Langdale v. Briggs, 8 De Ges., M. and G., 391*, as explained in the *Tagore case, 9 B. L. R., 877*, approved. *RAM-LALL MOOKERJEE v. SECRETARY OF STATE FOR INDIA IN COUNCIL*

[I. L. R., 7 Calc., 304; 10 C. L. R., 349
L. R., 8 I. A., 46]

HINDU WIDOW.

See CASES UNDER HINDU LAW—WIDOW.

Gift to—

See CASES UNDER HINDU LAW—GIFT—
CONSTRUCTION OF GIFTS BY WILL OR
DEED.

See RES JUDICATA—PARTIES—SAME PAR-
TIES OR THEIR REPRESENTATIVES.
[I. L. R., 1 All., 734]

Power of alienation of—

See CASES UNDER HINDU LAW—ALIENA-
TION—ALIENATION BY WIDOW.

See HINDU LAW—GIFT—POWER TO MAKE
AND ACCEPT GIFTS.
[I. L. R., 1 All., 734]

Power of, to adopt.

See CASES UNDER HINDU LAW—ADOPTION
—REQUISITES FOR ADOPTION—AUTHO-
RITY.

See CASES UNDER HINDU LAW—ADOPT-
TION—WHO MAY ADOPT.

**Power to sue executors and trust-
tees for share of estate with-
out certificate.**

See CERTIFICATE OF ADMINISTRATION—
RIGHT TO SUE OR EXECUTE DECREE
WITHOUT CERTIFICATE.
[I. L. R., 2 Calc., 45]

**Right of residence in family
dwelling-house.**

See CASES UNDER HINDU LAW—FAMILY
DWELLING-HOUSE.

**Suit by, as administratrix of hus-
band having minor son.**

See LETTERS OF ADMINISTRATION.
[I. L. R., 2 Calc., 431]

**With permission to adopt, Posi-
tion of—**

See HINDU LAW—ADOPTION—EFFECT OF
ADOPTION . I. L. R., 2 Calc., 295

HINDU WIDOW—continued.

See CASES UNDER HINDU LAW—ADOP-
TION—FAILURE OF ADOPTION OR OMIS-
SION TO EXERCISE POWER.

HINDU VENDOR OR PURCHASER.

See CASES UNDER MAHOMEDAN LAW—PRE-
EMPTION—RIGHT OF PRE-EMPTION—
GENERALLY.

HINDU WILLS ACT.

See HINDU LAW—WILL—NUNCUPATIVE
WILLS . I. L. R., 1 Bom., 641

See PROBATE—TO WHOM GRANTED.
[7 B. L. R., 563]

See PROBATE—EFFECT OF PROBATE.
[8 B. L. R., 208]

See PROBATE—PROOF OF WILL.
[10 C. L. R., 550]

s. 2.

See WILL—ATTESTATION.
[I. L. R., 2 Calc., 150
I. L. R., 6 Calc., 17]

See PROBATE—JURISDICTION OF DISTRICT
COURTS . I. L. R., 9 Bom., 241
[6 C. L. R., 138]

See PROBATE—POWER OF HIGH COURT TO
GRANT, &c.
[I. L. R., 6 Bom., 452, 703]

s. 3.

See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—SPECIAL CASES OF CON-
STRUCTION—REMOTENESS.
[I. L. R., 8 Calc., 157, 637]

HOLIDAY.

1. ——— Good Friday.—*Admission of
plaint.*—The reception of a plaint for arrears of rent
by the Collector on Good Friday, although by the
Circular Order of the Board of Revenue such day is
an authorised holiday, is not illegal. *GOBIND KU-
MAR CHOWDERY v. HARGOPAL NAG*
[3 B. L. R., Ap., 72; 11 W. R., 537]

2. ——— Sunday.—*Admission of plaint.*
—A plaint may be received and admitted by a
Munsif on a Sunday or other holiday. *UNUNTO-
RAM CHATTERJEE v. PROTAB CHUNDER SHIRO-
MONI* 16 W. R., 231

3. ——— Trial on Sunday.
—*Fining witnesses for non-attendance.*—*Penal
Code, s. 174.*—When a Magistrate while travelling in
his district tried a case partly at one place and then
fixed Sunday at noon for the further trial of the case
at another place, and the witnesses came three hours
late and the Magistrate having then gone on they
were subsequently sentenced by him under section 174
of the Penal Code for being intentionally absent,—
Held that the proceeding was irregular. The Magis-
trate was wrong in fixing Sunday for the trial of the

HOLIDAY.—Sunday—continued.

case, and the witnesses might, on the ground that it was a recognised holiday, have refused to attend.
QUEEN v. HARGOBIND DATTA SIKKAR

[8 B. L. R., Ap., 12

4. ————— Judicial work.—

Duty of Magistrate.—Magistrates should not take up judicial work on Sundays. **GRIFAMONEE v. ISHEN-CHUNDER**

W. R., 1864, Cr., 2

5. ————— Judge, Duty of.

Local investigation.—A Judge should not hold a local investigation on Sunday. **JHUBBOO SAHOO v. JUSSODA KORE**

17 W. R., 280

Time expiring on—

See BENGAL RENT ACT, 1869, s. 29.

[I. L. R., 4 Calc., 50

See DECREE—CONSTRUCTION OF DECREE—PRE-EMPTION . I. L. R., 3 All, 850

See CASES UNDER LIMITATION ACT, 1877, s. 5.

HOROSCOPE.

See EVIDENCE ACT, s. 32, Cl. 6.

[I. L. R., 9 Calc., 613

HOSPITAL, REQUEST TO—

See WILL—CONSTRUCTION.

[14 B. L. R., 442

HOUSEBREAKING.

See PRIVATE DEFENCE, RIGHT OF—

[1 B. L. R., S. N., 8

2 W. R., Cr., 42

and theft.

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R., 1 Bom., 214

W. R., 1864, Cr., 31

2 W. R., 93

5 W. R., Cr., 49

6 W. R., Cr., 49, 92

I. L. R., 2 All, 644

1 Bom., 87

9 Bom., 172

I. L. R., 10 Bom., 493

Intent to have sexual intercourse which would be adultery.—The prisoner was convicted of housebreaking, his object being to have sexual intercourse with the complainant's wife. *Held* conviction valid, the object, if accomplished, being an offence. **ANONYMOUS**

[8 Mad., Ap., 6

HOUSE TRESPASS.

See TRESPASS—HOUSE TRESPASS.

HUNDI

Col.

1. LAW APPLICABLE TO— . . . 2572
2. ENDORSEMENT . . . 2572

HUNDI—continued.

Col.

3. PRESENTATION . . . 2573

4. NOTICE OF DISHONOUR . . . 2574

5. LIABILITY ON— . . . 2576

6. INTEREST ON— . . . 2577

7. PROPERTY IN HUNDI AND FORGED

HUNDIS . . . 2578

8. JOKEMI HUNDI . . . 2579

See HINDU LAW—CONTRACT—BILLS OF EXCHANGE . . . 2 W. R., 214

[12 C. L. R., 333

See STAMP ACT, 1869, s. 20.

[I. L. R., 4 Calc., 259

See STAMP ACT, 1879, s. 3.

[I. L. R., 8 Calc., 284

See STAMP ACT, 1879, s. 10.

[I. L. R., 2 Mad., 173

Possession of—

See ONUS PROBANDI—DOCUMENTS RELATING TO LOANS, &c.

[I. L. R., 1 Bom., 295

Proof of payment of—

See ONUS PROBANDI—DOCUMENTS RELATING TO LOANS, &c.

[I. L. R., 1 Bom., 295

Suit on—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[1 B. L. R., O. C., 76

7 B. L. R., 102, 535

I. L. R., 1 Bom., 23

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . . . 7 B. L. R., 535

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . . . 4 C. L. R., 145

1. LAW APPLICABLE TO.**1. ————— Application of English law.**

—Analogy between hundi and bill of exchange.—

Where the analogy between native hundi and English bills of exchange is complete, the English law is to be applied. **SUMBOONATH GHOSH v. JODDONATH CHATTERJEE**

2 Hyde, 259

2. ENDORSEMENT.**2. ————— Necessity for endorsement.**

—Hundi given for particular purpose.—Hundi payable to order.—A party who receives a hundi for a particular purpose must apply the same accordingly, and neither he nor any third party knowing the facts can by afterwards receiving the amount detain the same from the principal. *Quare*,—Whether a hundi made payable "to order" is, according to Hindu law and the custom of native merchants, negotiable without a written endorsement by the payee. **RAJ-ROOPRAM v. BUDDOC**

[1 Ind. Jur., O. S., 93 : 1 Hyde, 155

HUNDI—continued.**2. ENDORSEMENT—continued.****Necessity for endorsement—continued.**

3. ——— Assignment of hundi.—*Bills of Exchange Act, V of 1866.*—A hundi which contains a direction on sufficient consideration to the drawee, and accepted by him, is within the terms of the Bills of Exchange Act, and such a document is assignable without any regular form of endorsement if sufficient cause appears in the handwriting of an endorser to indicate an intention to assign it. *EAST INDIA BANK v. VULLIE GOOLWANY* [1 Ind. Jur., N. S., 247]

4. ——— Proof of endorsement.—*Power of endorser to sue.*—Where a hundi had been endorsed to purchasers who subsequently returned it to the endorser, it was held by the Appellate Court (STEELE, J., *dissentiente*) that the Judge ought not to have decided against the endorser's claim because he had not proved that the note had been endorsed back to him. The Court would assume from his possession that he had a right to it, unless the contrary were shown. *BYJNATH SAKOO v. BACHARAM* [1 Ind. Jur., N. S., 76; 5 W. R., 86]

5. ——— Cancellation of endorsement.—*Endorsee for purposes of collection, Liability of.*—An endorsee for purposes of collection of certain hundis, under the circumstances ordered to cancel such endorsement and to re-deliver the hundis to the endorser. Such an endorsee, not having received the amount of the hundis, was held under the circumstances not liable to be sued for the value thereof. *GYANEE RAM v. PALSH RAM* . . . 2 N. W., 73

6. ——— Suit after endorsement.—*Bill payable to depositor.*—*Member of joint family.*—A hundi payable to the depositor is only payable to the drawer or his endorsee. When the drawer and his brother are members of an undivided Hindu family, it may be presumed that the latter is entitled to act for the former. *VELLET DOSS v. BUNARUSSEN ROY* . . . W. R., 1864, 262

7. ——— Suit by endorsee against acceptor.—*Notice not to discount, Effect of.*—*Bond fide holder for valuable consideration.*—To an action by the endorsee against the acceptor of a hundi, the defence was a certain verbal contract between acceptor and payee, of which the plaintiff had notice; and that by the custom of shroffs the defendant was exonerated by such notice. *Held* that it is the custom of shroffs to make enquiries of the acceptors of hundis before discounting them. That a mere notice by the acceptor not to discount does not affect his liability to a person who takes a hundi *bond fide* and for valuable consideration after such notice. *KHOSAL CHUND v. LUCHMEE CHUND* [Bourke, O. C., 151]

3. PRESENTATION.

8. ——— Time for presentation.—*Hundi payable on arrival.*—*Liability of drawee.*—*Time of presentation.*—*The custom of akhoiteej at Jeypore.*—Section 61 of the *Negotiable Instruments*

HUNDI—continued.**3. PRESENTATION—continued.****Time for presentation—continued.**

Act (XXVI of 1881).—A hundi was drawn in Calcutta upon a firm at Jeypore, and made payable on arrival at the place. The hundi reached Jeypore on the 5th April, but was not presented for payment until the 29th of that month, when it was dishonoured, and soon after the drawee's firm became insolvent. *Held* that the hundi was presented within reasonable time, and the delay which occurred in its presentation did not absolve the drawers from liability. In considering the question whether a hundi has been presented within reasonable time, regard should be had to the situation and interests of both drawer and payee, and to the distance of the place where the hundi is drawn from that where it is to be accepted. *MUTTY LALL v. CHOGEMULL* . . . I. L. R., 11 Cal., 344

9. ——— Reasonable time.—*Question of time of presentation.*—*Drawer without assets in hands of drawee.*—Presentation for acceptance within reasonable time is a condition precedent to a right of action on a bill or hundi payable after sight. Where the drawer had not assets in the hands of the drawee at or subsequent to the date of the hundi, *Held* that the question of presentation within reasonable time was immaterial. *NILKUND ANANTAPA v. MENSEH APURATA* [I. L. R., 10 Bom., 346]

10. ——— Presentation by purchaser.—A purchaser is bound to present a hundi for payment within a reasonable time. *GOPAL DASS v. SEETA RAM* . . . 3 Agra, 268

4. NOTICE OF DISHONOUR.

11. ——— Reasonable notice.—*Custom.*—*English law.*—A purchaser is bound to give reasonable notice of dishonour,—that is, within the time within which it is ordinarily given according to the custom of the merchants and bankers of the district, not the immediate notice required by English law in cases of bills of exchange. *GOPAL DASS v. SEETARAM* [3 Agra, 268]

12. ——— Custom.—*English law.*—Although the English law of prompt notice by return of post does not apply to cases of native hundis drawn by natives upon natives and endorsed by natives, yet reasonable notice of dishonour is essential. *RADHA GOBIND SHAHA v. CHUNDER NATH DASS SHAHA* . . . 6 W. R., 301
See SUMBHOONATH GHOSH v. JUDDONATH CHATTERJEE . . . Cor., 88

13. ——— Custom.—*English law.*—As regards notice of dishonour in connection with hundi transactions amongst natives of this country, although the strict rules of English law as to the time within which service of such notice must be made do not apply, yet the endorsee is bound to give the endorser notice within a reasonable time of his intention to come upon him, so as to enable the latter to take the necessary steps for his own protection. The question as to what is reasonable notice is to be

HUNDI—continued.**4. NOTICE OF DISHONOUR—continued.****Reasonable notice—continued.**

settled by local custom; and where a party has been prejudiced by the want of such notice, this is to be taken into consideration. *ANUNT RAM AGURWALLA v. NUTHALL* **21 W. R., 62**

14. ————— English law.—

Non-payment of hundi.—Although the strict rules of English law as to bills are not applicable to hundi, notice of dishonour or non-payment must be given within reasonable time to enable the drawee or endorsee to protect himself against the claims of subsequent endorsers. *TULSHI SHAHU v. NURSINGRAM* [12 C. L. R., 333]

15. ————— Demand of a peth.

Notice to endorser.—In order to charge the endorser of a dishonoured hundi, the holder must give reasonable notice of such dishonour to the endorser he seeks to charge. The demand of a peth cannot be deemed to be equivalent to a notice of dishonour. *MEGRAJ JAGANNATH v. GOKALDAS MATHURADAS* [7 Bom., O. C., 137]

16. ————— Sufficiency of notice.—Principal and agent.—Custom.—Delay in giving notice.—The drawers of a hundi in favour of the plaintiff at Dacca (where all the parties to the hundi lived) were held not liable on proof that they were the gomastahs of the acceptor, that they had no interest in the hundi, and that, according to custom in Dacca, where the hundi was drawn and accepted, agents under such circumstances are not liable, although the agency does not appear on the hundi. They were also held discharged from liability, notice of dishonour not having been served on them till ten months after the due date of the hundi. *HARI MOHAN BYSAK v. KRISHNA MOHAN BYSAK* [9 B. L. R., Ap., 1: 17 W. R., 442]

17. ————— Promise to pay endorsed on hundi.—Waiver of notice.—A promise to pay endorsed upon a hundi after it had been dishonoured, though not amounting to a waiver of notice, was held to be good and sufficient evidence that the endorser had received notice that the bill had been dishonoured. *ALI v. GOPAL DASS* [13 W. R., 420]

S. C. Before remand, *GOPAL DAS v. ALI* [3 B. L. R., A. C., 198]

18. ————— Damage to parties liable by omission to give notice.—Formal written notice.—*Suit on hundi.*—Previous formal written notice of dishonour of a hundi is not necessary before suit brought, unless it can be shown that the parties charged have been prejudiced by such omission. *GOVIND RAM MARWARY v. MATHOORA SABOYA* [I. L. R., 3 Cal., 339: 1 C. L. R., 429]

19. ————— Suit on hundi.—Act XXVI of 1881 (Negotiable Instruments Act), 93, 94, 98 (c).—In the absence of any local usage to the contrary, it is just and equitable that the doctrine of notice of dishonour propounded in the Negotiable

HUNDI—continued.**4. NOTICE OF DISHONOUR—continued.****Damage to parties liable by omission to give notice—continued.**

Instruments Act (XXVI of 1881) should be applied to a hundi in the vernacular, the "reasonable time" within which such notice is to be given being determined according to the circumstances of the case. *Held*, therefore, that where the holder of such a hundi, which had been dishonoured, sued the prior endorsers on it, without having given them such notice, and did not prove that they could not suffer damage for want of such notice, the suit must fail. *MOTI LAL v. MOTI LAL* **I. L. R., 6 All., 78**

5. LIABILITY ON.

20. ————— Usage of shroffs.—Consideration.—Dishonour of hundi.—Holder for value.—The plaintiff, as agent and banker of an Ajmir constituent, received a hundi for collection, and on its acceptance by the drawee, credited the Ajmir constituent with the amount as of the date when the hundi would become payable. *Held* that, as between the plaintiff and the Ajmir constituent, the plaintiff, upon such credit in account being given, became a holder for value. *Held* also that the hundi being dishonoured at due date by the drawee, the plaintiff was justified, by the usage of shroffs, in treating the Ajmir constituent as still entitled to credit for the amount, and himself as a holder for value. *Held* also that, as between the Ajmir constituent and the first indorser (the defendant and appellant), the giving by the Ajmir constituent to the defendant of another hundi which was never presented in Bombay for acceptance or payment, was a consideration for the endorsement by the defendant to the Ajmir constituent of the hundi sent by the latter to the plaintiff and sued on by him. *MULCHAND JOHARIMAL v. SUGANCHAND SHIVDA* **I. L. R., 1 Bom., 23**

Affirming the decision in *SUGANCHAND SHIVDAS v. MULCHAND JOHARIMAL* **12 Bom., 113**

21. ————— Liability of drawer, acceptor, and indorsee.—Separate contract.—Decree against one without satisfaction.—The drawer, acceptor, and intermediate endorsers of a hundi which is dishonoured are all liable to the holder, but their liability is not joint as it arises out of different contracts, and a decree obtained against any one of them without satisfaction cannot be pleaded as a bar to a suit against any other of them. *ABDOOR RUHMAN v. GUNNESH LALL* **23 W. R., 444**

22. ————— Defendants not all resident in jurisdiction.—Parties.—Act XXIII of 1861, s. 4.—Bankruptcy of acceptor.—In a suit on a hundi payable at Calcutta, the acceptor there having become bankrupt before the hundi reached maturity, brought by the holder in the place where the hundi was drawn against the two partners of the firm that drew the hundi, and also the acceptor, who resided at the time of suit beyond the local jurisdiction of the Court passing the decree, the Lower Appellate Court having dismissed the suit on the ground that the Court of first instance could not, without

HUNDI—continued.**5. LIABILITY ON—continued.**

Defendants not all resident in jurisdiction—continued.

the sanction provided by section 4 of Act XXIII of 1861, pass a decree against the defendant who resided beyond its jurisdiction.—*Held*, following the English law, that it was not necessary to sue the bankrupt defendant, and that the holder of a hundi is not bound, in the event of its dishonour, to sue all the parties liable under it, but may select any one or more of them. **BASANT RAM v. KOLAHAL**

[I. L. R., 1 All., 392]

23. — Cause of action.—Suit on hundi.—Inability to discover drawer.—Where, on account of a loan of Rs800, the lender gave the borrower two hundis for Rs1,500, and took away Rs693-7 as discount for Rs700, and the borrower being unable to discover the drawer of the hundis sued the lender, not on the hundis, but on two alleged loans of Rs800 and Rs693-7 respectively.—*Held* that the only right of action left to the borrower was on the hundis themselves. **RAM LAL SINGH v. GOPAL DOSS**

[7 W. R., 154]

24. — Duplicate of lost hundi.—Suit for money had and received.—The plaintiff obtained a hundi from a banker, B., at Baluchar, for a certain amount drawn upon the firm of the latter at Calcutta. Afterwards, on her representing to B. that she had lost the hundi, B. granted the plaintiff a duplicate, in the body of which it was stated that if the original had been accepted before presentation of the duplicate, the latter was to become null and void. The duplicate was presented to the agent of B. at Calcutta, and payment was refused on the ground that the original had been presented and accepted and paid in due time. *Held* that the plaintiff had no cause of action against B. for non-payment of the duplicate hundi, nor for money had and received on account of the original consideration having failed. **INDUR CHANDRA DUGAR v. LACHMI BIBI**

7 B. L. R., 682; 15 W. R., 501

25. — Accommodation bill.—Transferee for value.—Liability of party accommodated.—P. drew a hundi on S. (which S. accepted for P.'s accommodation), which he transferred for value to B. who transferred it for value to C., who transferred it for value to E. N., at E.'s request, and on his behalf, presented the hundi to S. for payment, and S. paid it. *Held* that S. was entitled to recover the amount of the hundi from P., but not from N. **Reynolds v. Doyle**, 2 Scott's N. R., 45, referred to. **NAND RAM v. SITLA PRASAD. RAM PRASAD v. SITLA PRASAD**

[I. L. R., 5 All., 484]

6. INTEREST ON.

26. — Usage of native bankers.—Hundis drawn payable at sight.—According to the usage of native bankers at Moorsheadabad, interest is claimable on hundis drawn at 111 days' sight. **DUNPUT SINGH DOOGAR v. JUGUT INDUR BUNWARER GOBIND DEB**

4 W. R., 85

HUNDI—continued.**7. PROPERTY IN HUNDI AND FORGED HUNDIS.**

27. — Property in hundi sent to agent for realisation.—S. E., the plaintiffs' agents in Calcutta, accepted hundis for Rs12,000 drawn upon them by a branch house of the plaintiffs' firm, and the plaintiffs at different times sent to S. E. hundis amounting in value to Rs11,400, with instructions to realise them, and to apply the proceeds towards payment of the Rs12,000. S. E. had paid Rs7,000 of this amount, and they had realised Rs6,400 out of the Rs11,400, when they stopped payment. At that time two unmatured hundis, for Rs2,500 each, remained in their hands, and these they endorsed over to the defendant after maturity in trust for their creditors. In an action by the plaintiff against the defendant to recover the two hundis.—*Held* that the hundis, having been sent to S. E. for the special purpose of enabling them to meet their acceptances for Rs12,000, remained the property of the plaintiffs subject to a lien of S. E. of Rs600. **HAZARI MULL NAHATTA v. SOBAGH MULL DUDDHA**

[9 B. L. R., 1]

28. — Forged hundi.—Mercantile usage.—Repayment to drawee by holder.—According to mercantile usage amongst Hindus, where a hundi, drawn "payable to owner" (shah jogi) is paid at maturity by the drawee to the shah or holder of the hundi, and such hundi afterwards turns out to be forged, the shah, though a *bond fide* holder for value, is bound to repay to the drawee the amount of such hundi with interest from the date of payment, provided that the drawee has been guilty of no *laches* in discovering the forgery and communicating the fact of such forgery to the shah. The shah, however, relieves himself from such liability by producing the actual forger. **DAYALPRASAD SHIBRAM v. BALAKIDAS KHEMCHAND**

6 Bom. Rep., O. C., 24

29. — Forged endorsement.—Suit to recover hundi.—The plaintiffs, being holders of a hundi, sent the same to their koti in Calcutta without endorsement. The hundi was lost or stolen on the way, and came into the defendants' hands as endorsees, the endorsement of the plaintiffs having been forged. The defendants, without notice of the forgery, paid full consideration for the hundi. *Held*, on appeal, reversing the decision of the Court below, that the plaintiffs were not entitled to recover the hundi from the defendants. *Per PRACOCK, C. J.*—It appeared from the evidence that the hundi in this case would pass, at any rate prior to acceptance, by delivery. **GOURSIMULL v. DHANSUK DAS**

[7 B. L. R., 289, note: 16 W. R., 10, note

30. — Suit to recover hundi.—Bond fide holder for valuable consideration.—A hundi which had been purchased by the plaintiff at Delhi for value was, he alleged, endorsed by him to the firm of R. B. D. of Calcutta, "for realisation," and sent to that firm by post. Between Delhi and Calcutta the hundi was lost or stolen, and never reached the firm of R. B. D. It eventually came into the hands of the defendant, bearing no endorsement to R. B. D., but endorsed to U. D. H., and by

HUNDI—continued.**7. PROPERTY IN HUNDI AND FORGED HUNDIS—continued.****Forged endorsement—continued.**

U. D. H. The defendant alleged that he took it in the ordinary course of business, and for valuable consideration, from the gomastah of the firm of *U. D. H.*, after the acceptors to whom it had been sent for that purpose had acknowledged their acceptance in favour of the firm of *U. D. H.*, of Calcutta, by whom it purported to be endorsed to the defendant's firm. When presented to the acceptors for payment it was dishonoured, the acceptors stating that they had received notice not to pay the note, as it had been stolen. On the same day the defendant gave notice of dishonour to the firm of *U. D. H.*, and demanded payment, but that firm stated that their endorsement to the hundi was forged, and refused to pay. It was proved that before taking the hundi, the defendant had sent to the acceptor's kotli to ascertain if their acceptance was genuine. In a suit for the recovery of the hundi, or its value,—*Held* by the Court below that the endorsement of *U. D. H.* was genuine, and that the plaintiff was not entitled to recover the hundi. The defendant having taken the hundi in the ordinary course of business and after sufficient enquiry, was entitled to retain it: this was so notwithstanding the endorsement "for realisation" on the hundi. The hundi was one which passed by delivery without endorsement, and therefore if the endorsement of *U. D. H.* was forged, the defendant still had a right to the hundi. On appeal, the Court held that the endorsement to the firm of *U. D. H.* was not genuine, and this being so, the fact that the defendant took the hundi in the course of business for valuable consideration, and without notice, did not give him a good title to retain it as against the plaintiff. The hundi was specially accepted, and there was nothing to show that by Hindu law such a hundi would pass as one payable to the holder without endorsement. *THAKUR DAS v. FUTTEH MULL*

[7 B. L. R., 275: 16 W. R., O. C., 3]

8. JOKHMI HUNDI.

31. ——— Equitable assignment of goods as security.—Custom.—If the drawee of a jokhmi hundi refuses to accept it, and nevertheless as consignee takes possession of the goods against which it is drawn and which are referred to in it, the only remedy of the holder is against the drawer of the hundi, or the person from whom the holder bought it. The plaintiffs at N. purchased, on 22nd December 1878, from L., for Rs. 4,000, a jokhmi hundi drawn in favour of plaintiffs by L., upon his firm in Bombay. The hundi contained a statement that it was "drawn against" twenty-nine bales of wool shipped at Tuna, and it was made payable eight days after the safe arrival of the ship at Bombay. The plaintiffs obtained from L., at the same time, a letter addressed by him to his firm at Bombay, which contained the following passage: "Upon you a jokhmi hundi is drawn, the particulars whereof are as follows: (Rs. 4,000). The value having been received from Jadowji Gopalji, hundis for Rs. 4,000 drawn against 29 bags of sheep's

HUNDI—continued.**8. JOKHMI HUNDI—continued.****Equitable assignment of goods as security—continued.**

wool shipped on board the *Hariprasad*, owner Daya Morarji, from the seaport town of Tuna.....On the safe arrival of the vessel do you be good enough to land the goods, and deliver the same to Jadowji Gopalji; and as to the jokhmi hundis drawn before, if in respect thereof any money has to be paid to Jadowji Gopalji, do you be good enough to pay the same." The above letter was duly presented by the plaintiffs to L.'s Bombay firm on the 27th December 1878. Evidence was given that at the time the plaintiffs obtained the hundi and the letter, the goods referred to had been already shipped. On the 1st January 1879, the firm of L. was adjudicated insolvent by the High Court at Bombay. On the 5th January 1879, the ship arrived at Bombay with the goods in question on board, and on the 7th January the shipowners delivered them to the Official Assignee. The plaintiffs sued the Official Assignee (as assignee of the estate and effects of L.) and the shipowners to recover possession of the wool, or the amount of the hundi, and contended that by the custom of Bombay the holder of a jokhmi hundi had a charge upon the goods mentioned therein, and that, in the event of the drawee failing to pay the amount of the hundi, the holder was entitled to obtain possession of the goods and realise by their sale the amount due to him upon the hundi. Plaintiff also contended that the above letter of the 22nd December 1878 operated as a valid equitable assignment of the wool to him. *Held* that the plaintiff, as holder of a jokhmi hundi, had no charge upon the wool in question, and could not upon this ground recover from the defendants the possession of the wool or the amount due upon the hundi; but held also, on the authority of *Burn v. Carvalho, 4 M. and Cr., 690*, that the letter of the 22nd December 1878 operated as an equitable assignment of the wool to the plaintiffs, on the safe arrival of the vessel, as a security for the payment of the hundi, and that the plaintiffs were, therefore, entitled to obtain possession of the wool. *JADOWJI GOPAL v. JETHA SHAMJI*

[I. L. R., 4 Bom., 333]

HURT.

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| (1) CAUSING HURT | : | : | : | 2580 |
| (2) GRIEVOUS HURT | : | : | : | 2582 |

See COMPOUNDING OFFENCE.[I. L. R., 1 Bom., 147
10 Bom., 68]**See CULPABLE HOMICIDE.**[I. L. R., 3 Calc., 623
1 C. L. R., 141]**1. CAUSING HURT.**

1. ——— Nature of injury constituting "hurt."—*Causing serious disability.*—Causing a disability for a fortnight is punishable for voluntarily causing hurt. *QUEEN v. BISHNOORAM SURMA*

1 W. R., Cr., 9

HURT—continued.**1. CAUSING HURT—continued.**

2. ———— Penal Code, s. 328.—“Other thing.”—The words “or other thing” in section 328 of the Penal Code must be referred to the preceding words, and be taken to mean “unwholesome or other thing,” and not “other thing” simply. **QUEEN v. JOTEE GHORAIN** . . . 1 W. R., Cr., 7

3. ———— Blow with umbrella.—Penal Code, ss. 95, 319.—The pain caused by a blow across the chest with an umbrella, was held to be not of such a trivial character as to come within the meaning of the Penal Code, section 95; but to be hurt under section 319. **GOVERNMENT OF BENGAL v. SHRO GHOLAM LALLA** . . . 24 W. R., Cr., 67

4. ———— Penal Code, s. 324.—Manner of using weapon.—On the construction of section 324 of the Penal Code,—*Held* that it is not necessary that the manner of use of the weapon must be such as is likely to cause death. **ANONYMOUS** [7 Mad., Ap., 11

5. ———— Administering harmful drugs.—Penal Code, ss. 326, 328.—Held, by the majority of the Court (*dissentiente* SUTON-KARE, J.) that the offence of administering deleterious drugs without endangering life is punishable under section 328 of the Penal Code, and not under section 326 as grievous hurt. **QUEEN v. JOYGOPAL** [4 W. R., Cr., 4

6. ———— Causing hurt on grave provocation.—Penal Code, ss. 324, 333.—Causing hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under section 334, and not under section 324 of the Penal Code. **REG. v. BHALA CHULA** . . . 1 Bom., 17

7. ———— Causing death after provocation.—Disease of spleen.—The prisoner having received great provocation from his wife pushed her so as to throw her with violence to the ground, and after she was down struck her with his open hand. She died, and on examination it appeared there were no external marks of violence on the body, but that there was disease of the spleen and that death was caused by rupture of the spleen. *Held*, under the circumstances, that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder. **QUEEN v. PUNCHANUN TANTER** [5 W. R., Cr., 97

8. ———— Chance injury on provocation.—Penal Code, ss. 319-322.—Where a wife died from a chance kick in the spleen inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself and by his conduct immediately afterwards that he had no intention or knowledge that the act was likely to cause hurt endangering human life,—*Held* that the husband was guilty of an offence under sections 319 and 321 of the Penal Code, and not an offence under sections 320 and 322. **QUEEN v. BYSAGOO NOSHYO** . . . 8 W. R., Cr., 29

HURT—continued.**1. CAUSING HURT—continued.**

9. ———— Causing death unintentionally.—Penal Code, s. 323.—Where, according to the prisoner's own confession (which was the only direct evidence against her), she, with a view to chastising the deceased, her daughter of eight or ten years of age, for impertinence, but without any intention of killing her, gave her a kick on the back and two slaps on the face the result of which was death,—*Held* that the conviction should be under section 323, Penal Code, of voluntarily causing hurt, and the punishment one year's rigorous imprisonment. **QUEEN v. BESHOR BEWA** . . . 18 W. R., Cr., 29

10. ———— Hurt caused in extorting confession of offence.—Penal Code, s. 330.—Witchcraft.—To bring a case under section 330 of the Penal Code, it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offences or misconduct punishable under the Penal Code. That section therefore does not apply to a case where the confession extorted had reference to a charge of witchcraft. **QUEEN v. MOON-DEE** . . . 13 W. R., Cr., 28

11. ———— Hurt caused to extort information of offence.—Penal Code, s. 330.—A charge may be made under section 330, Penal Code, of causing hurt for the purposes of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement or a confession having reference to offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial. **QUEEN v. NIM CHAND MOOKERJEE** . . . 20 W. R., Cr., 41

12. ———— Assault and causing hurt.—Penal Code, s. 352.—Autrefois acquit.—A person who is tried and discharged for the offence of assault under section 352, Penal Code, cannot again, upon the same complaint, be tried for “causing hurt.” **KAPTAN v. SMITH**

[7 B. L. R., Ap., 25; 16 W. R., Cr., 8

2. GRIEVOUS HURT.

13. ———— Nature of hurt constituting grievous hurt.—What amounts to “grievous hurt” considered. **REG. v. ANTA BIN DADORA** [1 Bom., 101

14. ———— Serious disability.—A disability for twenty days constitutes grievous hurt. **QUEEN v. BISHNOORAM SURMA**

[1 W. R., Cr., 9

15. ———— Proof of offence.—Penal Code, s. 320.—There must be evidence to prove that hurt, as described in section 320 of the Penal Code as grievous hurt, has been caused before a conviction can be had under section 320 of that Code. **QUEEN v. KAMINEE DOSSEN** . . . 12 W. R., Cr., 25

HURT—continued.**2. GRIEVOUS HURT—continued.**

16. ——— Requisites for offence.—
Voluntary hurt.—Penal Code, s. 325.—To make out the offence of voluntarily causing grievous hurt under section 325, Penal Code, there must be some specific hurt, voluntarily inflicted, and coming within some of the eight kinds enumerated in section 320. *QUEEN v. BUDRI ROY* . 23 W. R., Cr., 65

17. ——— Joint attack by several persons resulting in serious injury.—Assault.—When the result of a joint attack by several persons on one man is the fracture of his arm, the offence committed is grievous hurt, and not assault. *QUEEN v. RAMTOHUL SINGH* . 5 W. R., Cr., 12

18. ——— Want of intention, likelihood, or knowledge that injury is likely to cause death.—When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide, but grievous hurt. *QUEEN v. MEGHA MEEHA* . 2 W. R., Cr., 39

19. ——— Want of intention to cause death.—Robbery.—Where, in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery. *QUEEN v. CHAKOR HUREN* . 6 W. R., Cr., 16

20. ——— Grievous hurt in commission of lurking house-trespass.—Penal Code, ss. 324, 457, 460.—A person who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under section 460, and not under sections 457 and 324 of the Penal Code. *QUEEN v. LUKHUN DOSS* [2 W. R., Cr., 52

21. ——— Beating a man found committing theft.—Presumption.—The prisoners found a man in the act of theft, and were beating and cuffing him, when one of the witnesses for the prosecution threatened to call a chowkidar, and they released him. Two days afterwards he was found drowned. *Held* that there was no evidence to convict the prisoners of causing grievous hurt. All presumptions consequent on the man's body being found drowned should have been put aside, and the original assault alone considered. *QUEEN v. NUNKOO DOSS* [2 W. R., Cr., 48

22. ——— Driving over deaf man.—Penal Code, s. 338.—Negligence.—Defendant was convicted under section 338 of the Penal Code of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town, between the hours of 7 and 8 P.M.; that the carriage was being driven at an ordinary pace, and in the middle of the road; that the night was dark, and the carriage without lamps, but that the horsekeeper and coachman

HURT—continued.**2. GRIEVOUS HURT—continued.****Driving over deaf man—continued.**

were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over, and killed. *Held*, upon a reference, that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed. *ANONYMOUS* [6 Mad., Ap., 32

23. ——— Grievous hurt on grave and sudden provocation.—Penal Code, s. 335.—Causing grievous hurt on grave and sudden provocation is punishable under section 335 of the Penal Code, without any intention or knowledge of likelihood of causing such hurt. *QUEEN v. UMBICA TANTINEN* [4 W. R., Cr., 21

QUEEN v. BHADDOO PORAMANICK [4 W. R., Cr., 23

24. ——— Hurt caused in house-breaking.—Penal Code, ss. 459, 460.—Sections 459 and 460 of the Penal Code provide for a compound offence, the governing incident of which is that either a "lurking house-trespass" or "house-breaking" must have been completed, in order to make a person who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt responsible under those sections. The sections must be construed strictly, and they are not applicable where the principal act done by the accused person amounts to no more than a mere attempt to commit lurking house-trespass or house-breaking. *QUEEN-EMPERESS v. ISMAIL KHAN* . I. L. R., 8 All., 649

25. ——— Charge of grievous hurt.—Committal for trial.—A prisoner charged with the offence of causing "grievous hurt" should be committed for trial to the Sessions Court. *REG. v. ANTA BIN DADOBA* . 1 Bom., 101

HUSBAND AND WIFE.

See CASES UNDER HINDU LAW—CONTRACT—HUSBAND AND WIFE.

See PARTIES—PARTIES TO SUITS—HUSBAND AND WIFE . 10 C. L. R., 536 [1 Hyde, 281

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . Cor., 82 [W. R., 1864, 318

See CASES UNDER RESTITUTION OF CONJUGAL RIGHTS.

See SUCCESSION ACT, s. 4. [13 B. L. R., 383 I. L. R., 1 Calc., 412

See WILL—CONSTRUCTION. [4 B. L. R., O. C., 53

HUSBAND AND WIFE—continued.

1. — Partnership as traders.—*Authority from husband.*—When a husband and wife are trading in partnership, it is only reasonable to presume that an authority from the husband on matters connected with the partnership is binding on the wife. *KOTOO v. KO PAY YAH*. 6 W. R., 254

2. — Ante-nuptial settlement.—*Wife a minor.—Settlement made by guardian.—**Fraud of guardian.*—Where a wife (a minor) sought to enforce an ante-nuptial settlement as against the creditors of her husband, the settlement having been made and negotiated on her behalf by her father as her guardian; and the father, under such circumstances, had made a contract for her which was void as against third persons, on the ground of public policy,—*Held*, that such a contract could no more be enforced by the minor against those third persons, than it could be enforced by her, had she been an adult and made the contract herself. It is unnecessary, in order to avoid an ante-nuptial settlement as against a minor wife and her children, where the conduct of the father who brought about the marriage has been shown to be fraudulent, to show that the minor was a party to the fraud. *POGOSE v. DELHI AND LONDON BANKING CO.*
[I. L. R., 10 Cal., 951]

3. — Wife's equity to a settlement.—*Illegitimacy.—Right to bastard's estate.—**Execution of decrees.*—*M.*, the widow and administratrix of a bastard who had died intestate and without issue, received a letter in 1841 from the Lords Commissioners of the Treasury, stating that they did not deem it expedient to take any steps for the assertion of the rights of the claim with regard to her late husband's estate. Previous to this *M.* had obtained possession of that estate, and two months before the receipt of the letter she had contracted a second marriage. No settlement was made upon the marriage, and since the marriage her second husband had had the management of the property. In execution of a decree against the husband, his right, title, and interest in and to a portion of the property were put up for sale, and purchased by the plaintiff. The plaintiff's right to possession was disputed by *M.*, who contended that her husband took no interest in the two-thirds of the property, which went to the Crown which could be attached and sold in execution. In a suit by the plaintiff to establish her rights over the property,—*Held* that the rights of her husband extended over the whole estate and were rights which could be seized in execution and sold. *M.*'s husband being without property and in great difficulties, and subsisting only on a life-pension of £118 a month, *M.* was entitled to a settlement. *TOOLSEN-MONEY DOSSER v. CORNELIUS*. 11 B. L. R., 144

4. — Deed of separation.—*Agreement not to molest husband.—Right of suit.*—A suit is not maintainable by a wife for an allowance from her husband on an agreement, for which the sole consideration is a stipulation that the wife is not to communicate with or molest her husband, such stipulation falling within the general rule that a deed of separation entered into by husband and wife with-

HUSBAND AND WIFE.—Deed of separation—continued.

out the intervention of trustees is void. *HUGHES v. HUGHES*. 16 W. R., 250

5. — Plea of coverture.—*Separate property of wife.—Suit on promissory note.—**Personal decrees.*—The defendant, a married woman living with her husband, both domiciled in British India and resident in Calcutta, where they had been married on 21st May 1866, and having property to which she was absolutely entitled under the provisions of the Succession Act, signed a promissory note in favour of the plaintiff for a debt due by her to the plaintiff, at the same time giving a verbal promise to pay the amount out of her own property. In a suit on the promissory note, in which the husband and wife were made parties, the wife pleaded her coverture,—*Held* that she was liable to pay the amount of the promissory note out of her own property, and the Court would, if necessary, make a personal decree against her. *ARCHER v. WATKINS*. 8 B. L. R., 372

6. — Married woman's power to contract in respect of her separate property.—*Roman and English law.*—A married woman is capable of contracting in respect of her separate estate. The doctrines of the Roman and English law upon the subject examined. *NARAYAN CHETTY v. JENSEN*. 2 Mad., 383

7. — Separate property of wife.—*Jewels given to wife during coverture.*—Jewels given to a married woman during coverture by a relative or a stranger,—*Held* to be property belonging to the separate use of the wife. *Held*, further, that the subsequent investment of the same in the purchase of real estate conveyed to the wife does not cause a change in the nature of such property. *COHEN v. AUCTION & Co.*. 1 Hyde, 180

8. — Parsis.—*Ornaments given to wife by her father.*—The rule laid down in *Graham v. Londonderry*, 3 Atk., 393, with regard to a husband's rights over ornaments given to his wife by her father, applied to Parsis. *DHANJIBHAI BOMANJI GUGRAI v. NAVAZBAI*
[I. L. R., 2 Bom., 75]

9. — Husband managing separate property of wife.—Where husband and wife are living together, and the wife has property of her own which the husband is in possession of and manages, his possession must be considered to be his wife's. He has no right to part with such property without her consent. *SOODA RAM DOSS v. JOOGUL KISHORE GOPTO*. 24 W. R., 274

10. — Legacy.—*Purchase with wife's legacy.*—*C.*, a married woman, was entitled, under her father's will, to certain money "absolutely for her sole use and benefit, free from the control, debts, and liabilities of her husband," and under such will such money was payable to her "on her sole and personal receipt." While so entitled *C.* borrowed from her husband the purchase-money of certain real property, on the understanding that she

HUSBAND AND WIFE.—Separate property of wife—continued.

would pay him back such money when she obtained her legacy. The conveyance of such property was made to C., but not to her separate use. C. subsequently assigned her legacy by sale, and out of the money obtained by such assignment repaid her husband the purchase-money of the property purchased. *Held* that the conversion by C. of her legacy did not alter its character and conditions, and that the property purchased was her own separate property and was not subject to the debts or liabilities of her husband. **HURST v. MUSSOORIE BANK** I. L. R., 1 All, 762

11. ———— Legacy.—Property purchased with legacy.—Sale in execution of decree.—Right of purchaser.—C., a married woman, was entitled, under her father's will, to certain money "absolutely for her sole use and benefit, free from the control, debts, and liabilities of her husband," and under such will such money was payable to her "on her sole and personal receipt." While so entitled C. borrowed from her husband the purchase-money of certain real property, on the understanding that she would pay him back such money when she obtained her legacy. The conveyance of such property was made to C. but not to her separate use. C. subsequently assigned her legacy by sale, and out of the money obtained by such assignment repaid her husband the purchase-money of the property purchased. C. and her husband were married before Act X of 1865 came into force, and had acquired an Indian domicile. *Held* that, even if English law were applicable in the case, and any interest in the property purchased passed to C.'s husband, it passed, in view of the agreement between her and her husband, on an implied contract that he would hold the property in trust for her, and that, where such property was purchased at a sale in the execution of a decree against J. as his property, with notice that such property was claimed by C. as her separate property, such purchase did not defeat the title of C. **BERRSFORD v. HURST** I. L. R., 1 All, 772

12. ———— Married Woman's Property Act (III of 1874), ss. 7 & 8.—Succession Act (X of 1865), s. 4.—Action for trover.—Wife against husband.—The plaintiff was, at the time of her marriage in 1870, possessed in her own right of certain articles of household furniture, given to her by her mother. Since January 1875 she had lived separate from her husband, but the furniture remained in his house. In February 1875 her husband mortgaged the property to B., without the plaintiff's knowledge or consent. In June 1875 one K. C. B., a creditor, obtained a decree against the husband and B., in execution of which he seized the furniture as the property of the husband, and it remained in Court subject to the seizure. In July 1875 the plaintiff instituted a suit in her own name in trover to recover the articles of furniture or their value from her husband, on the ground that they were her separate property, and in August 1875 she preferred a claim in her own name to the property under section 88 of Act IX of 1850. It was found on the facts that the furniture was the property of the plaintiff. The husband and wife were persons sub-

HUSBAND AND WIFE.—Married Woman's Property Act (III of 1874), ss. 7 & 8—continued.

ject to the provisions of the Succession Act, section 4, and the Married Woman's Property Act, 1874. *Held* that, under section 7 of the latter Act, the suit was maintainable against the husband. *Held* also, that the judgment for the plaintiff in the suit, to recover the furniture or its value from the husband, could not, without satisfaction, have the effect of vesting the property in the husband from the time of the conversion, and therefore the claim under Act IX of 1850 was also maintainable. *Brinsmead v. Harrison*, L. R., 6 C. P., 594, followed. **HARRIS v. HARRIS** *HARRIS v. KOYLAS CHUNDER BANO PADIA* [I. L. R., 1 Cal., 285

13. ———— ss. 4, 7, 8.—Execution of decree against separate property of wife.—Domicile.—Agency.—Act III of 1874 (The Married Woman's Property Act) applies to persons having an English domicile. Accordingly, the separate property of a married woman (whose husband's domicile is English) is alone bound by all debts, obligations, and engagements incurred by her in the management of a business carried on by her alone, and execution of any decree obtained against her in respect of such business should be limited to her separate property. The principle that the wife is impliedly carrying on business as the agent of the husband is excluded by the provisions of Act III of 1874. **ALLUMUDDY v. BRAHAM** I. L. R., 4 Cal., 140; 2 C. L. R., 431

HUTS.

Right of tenant to remove—
See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE.
[14 B. L. R., 201

Seizure of, in execution.
See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY.
[8 B. L. R., 508, 510, note 512, note 514, note 2 B. L. R., A. C., 77
See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—MOVEABLE PROPERTY . . . 10 B. L. R., 448

I**IDIOTCY.**

See REGISTRATION ACT, 1877, s. 35 (1871, s. 35) . . . I. L. R., 1 All, 465

IDOL.

Dedication to—
See CASES UNDER HINDU LAW—ENDOWMENT.
See HINDU LAW—PARTITION—AGREEMENT NOT TO PARTITION AND RESTRAINT ON PARTITION . . . 8 B. L. R., 60

IDOL—continued.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—SPECIAL CASES OF CONSTRUCTION—REQUEST TO IDOL.
[2 B. L. R., A. C., 137, note

Grant of letters of administration for debutter property of—

See PROBATE ACT, ss. 18–23.
[I. L. R., 12 Calc., 375

Joint ownership in right of worship of—

See PARTITION—RIGHT TO PARTITION—GENERAL CASES . 14 B. L. R., 166

Suit for right of exclusive worship of—

See LIMITATION ACT, 1877, ARTS. 120, 131 (1871, ARTS. 118 AND 131).
[I. L. R., 4 Calc., 683

Suit for turn of worship of—

See LIMITATION ACT, 1877, ART. 131 (1859, s. 1, CL. 16) . 6 B. L. R., 352
[I. L. R., 4 Calc., 683
I. L. R., 8 Calc., 807

ILLEGAL AGREEMENT.

See CASES UNDER CONTRACT ACT, s. 23.

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT . I. L. R., 1 Bom., 550

ILLEGAL CESS.

See CASES UNDER CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—ILLEGAL CESSES.

1. ——— Wages and allowance of patwari.—A patwari's wages and allowances are in the nature of illegal cesses, and cannot be recovered in a suit for rent. *MENGUR MUNDUR v. HUREN MOHUN THAKOOR* . . . 23 W. R., 447

2. ——— Payments in nature of rent in kind.—*Local custom*.—Certain payments which were not so much in the nature of cesses as of rent in kind, and which were fixed and uniform and had been paid by the ryot for a long time according to local custom, were held not to be illegal cesses. *Orjoon Sahoo v. Anand Singh*, 10 W. R., 257, distinguished. *BUDHUA ORAWAN MARTOON v. JUGGESUR DOYAL SINGH* . . . 24 W. R., 4

3. ——— Purabee.—*Consideration for agreement*.—A purabee, when it is part of the consideration for which an agreement is entered into, is not in the nature of an abwab or illegal cess. *JUGGODISH CHUNDER BISWAS v. TURRIKOOLOAH SIRCAR* [24 W. R., 90

ILLEGAL GRATIFICATION.

See PUBLIC SERVANT . 7 B. L. R., 446
[I. L. R., 1 All., 530
I. L. R., 4 Calc., 376
21 W. R., Cr., 9

ILLEGAL GRATIFICATION—continued.

1. ——— Attempt to obtain bribe.—*Penal Code, s. 161*.—*Asking for bribe*.—To ask for a bribe is an attempt to obtain one, and a bribe may be asked for as effectually in implicit as in explicit terms. Where, therefore, *B.*, who was employed as a clerk in the pension department, in an interview with *A.*, who was an applicant for a pension, after referring to his own influence in that department and instancing two cases in which by that influence increased pensions had been obtained, proceeded to intimate that anything might be effected by "*karrawai*," and on the overture being rejected concluded by declaring that *A.* would rue and repent the rejection of it.—*Held* that the offence of attempting to obtain a bribe was consummated. *EMPRESS v. BALDEO SAHAI* . . . I. L. R., 2 All., 253

2. ——— Non-commission of act for which bribe was given.—*Penal Code, s. 161*.—The taking of a bribe by a serishtadar to influence a Principal Sudder Ameen in his decisions is sufficient for a legal conviction, whether the serishtadar did or did not influence or try to influence the Principal Sudder Ameen, since section 161 of the Penal Code expressly mentions that "a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for what he has not done," is punishable. *QUEEN v. KALACHURN* [3 W. R., Cr., 10

3. ——— Taking bribe for inducing public servant to forbear to do certain official act.—*Penal Code, s. 162*.—A person who accepts for himself or for some other person a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under section 161 but under section 162 of the Penal Code. *QUEEN v. OBHOYCHURN CHUCKERBUTTY* . . . 3 W. R., Cr., 19

4. ——— Patwari taking grain in consideration of showing favour to giver.—*Penal Code, ss. 161, 165*.—A patwari taking grain as a consideration for showing favour to the giver in the discharge of his functions as patwari, should be convicted under section 161, and not section 165, of the Penal Code. *QUEEN v. MUDSOOD-DEEN* . . . 2 N. W., 148

5. ——— Proper order on conviction.—*Sentence*.—*Order to refund money*.—On a conviction of taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. *IN THE MATTER OF MUTTY LALL CHATTOPADHYA* . . . 16 W. R., Cr., 74

ILLEGITIMACY.

See CASES UNDER HINDU LAW—MARRIAGE.

See HUSBAND AND WIFE.

[11 B. L. R., 144

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT.

See CASES UNDER HINDU LAW—MARRIAGE.

ILLEGITIMACY—continued.**Question of—**

See EXECUTION OF DECREE—EXECUTION
BY OR AGAINST REPRESENTATIVES.

[I. L. R., 2 Calc., 327
17 W. R., 428]

See RES JUDICATA—PARTIES—SAME PAR-
TIES OR THEIR REPRESENTATIVES.

[I. L. R., 2 Calc., 327]

1. ——— Right to bastard's estate.—
*Escheat.—Non-assertion of claim by Crown.—Es-
toppel.—M.*, the widow and administratrix of a bas-
tard who had died intestate and without issue, received
a letter in 1841 from the Lords Commissioners of the
Treasury stating that they did not deem it expedient
to take any steps for the assertion of the rights of the
Crown with regard to her late husband's estate.
Previous to this *M.* had obtained possession of that
estate, and two months before the receipt of the
letter she had contracted a second marriage. No set-
tlement was made upon this marriage, and since the
time of the marriage, *M.*'s second husband had had the
exclusive management of the property. In execution
of a decree against the husband, his right, title, and
interest in and to a portion of the property were put
up for sale and purchased by the plaintiff. The plain-
tiff's right to possession was disputed by *M.*, who con-
tended that her husband took no interest in the two
thirds of the property which went to the Crown which
could be attached and sold in execution. In a suit by
the plaintiff to establish her rights over the property,
—*Held* that the Crown would be estopped by the line
adopted by the Commissioners of the Treasury in 1841
from asserting its claim to the two thirds; and that
M. had a good title to the whole estate even as against
the Crown. *TOOLSEEMONEY DOSSEE v. CORNELIUS*
[11 B. L. R., 144]

2. ——— Letters of administration.—
Parties.—The Administrator General's Act, XXIV
of 1867, s. 15.—Succession Act (X of 1865), s. 224.
—The plaintiffs applied for probate of the will of one
R. D. to be granted to them as executor and executrix
thereof. The Administrator General had entered a
caveat and appeared to oppose the application. The
petition for probate was therefore ordered to be treat-
ed as a plaint, both parties to file a written statement,
and the case was set down to be heard. At the hear-
ing it appeared *R. D.* was illegitimate, and the issue for
trial was whether the document was or was not her
will. *Held* that the Administrator General would be
entitled to letters of administration under section 15,
Act XXIV of 1867, and that it was not necessary to
make the Government a party to the suit. *Semble*,—
The Administrator General would have been entitled
to apply for letters of administration under section
224 of Act X of 1865. *DEMBELLO v. BROUGHTON*
[11 B. L. R., Ap., 6]

ILLEGITIMATE CHILDREN.

See CUSTODY OF CHILDREN.

[I. L. R., 4 Calc., 374]

See CASES UNDER HINDU LAW—INHERIT-
ANCE—ILLEGITIMATE CHILDREN.

ILLEGITIMATE CHILDREN—continued.

See CASES UNDER HINDU LAW—MAINTEN-
ANCE—RIGHT TO MAINTENANCE—ILLE-
GITIMATE CHILDREN.

See HINDU LAW—MARRIAGE—VALIDITY
OR OTHERWISE OF MARRIAGE.

[3 B. L. R., P. C., 1]

ILLEGITIMATE SON.

See HINDU LAW—ALIENATION—ALIENA-
TION BY FATHER.

[I. L. R., 3 Calc., 214]

See HINDU LAW—CUSTOM—IMMORAL
CUSTOMS . I. L. R., 2 Bom., 140

See CASES UNDER HINDU LAW—INHERIT-
ANCE—ILLEGITIMATE CHILDREN.

See CASES UNDER HINDU LAW—MAINTEN-
ANCE—RIGHT TO MAINTENANCE—ILLE-
GITIMATE CHILDREN.

See PARTIES—PARTIES TO SUITS—MAIN-
TENANCE, SUITS FOR.

[I. L. R., 2 Bom., 140]

Adopted son of—

See HINDU LAW—PARTITION—SHARES ON
PARTITION—ADOPTED SON.

[I. L. R., 4 Calc., 425]

ILLCIT SALE OF LIQUOR.

See EXCISE ACT.

[I. L. R., 1 All., 630, 635, 638]

**ILLUSTRATIONS TO SECTIONS OF
ACTS.**

See CONTRACT ACT . I. L. R., 1 All., 487

[22 W. R., 367]

See LIMITATION ACT, 1887, s. 28.

[I. L. R., 7 Calc., 132]

IMMOVEABLE PROPERTY.

See HINDU LAW—JOINT FAMILY—NA-
TURE OF AND INTEREST IN PROPERTY—
ANCESTRAL PROPERTY.

[I. L. R., 3 Calc., 506]

See HINDU LAW—WIDOW—POWER OF
WIDOW—POWER OF DISPOSITION OR
ALIENATION . I. L. R., 2 Bom., 67

See LIMITATION ACT, 1877, ART. 48
(1871, ART. 48) I. L. R., 4 Calc., 665

See CASES UNDER LIMITATION ACT, 1877,
ART. 144—INTEREST IN IMMOVEABLE
PROPERTY.

See SECURITY FOR COSTS—SUITS.

[7 B. L. R., Ap., 60]

See CASES UNDER SMALL CAUSE COURT,
MOFUSIL—JURISDICTION—MOVEABLE
PROPERTY.

Agreement defining shares in—

See LIMITATION ACT, 1877, ART. 144
(1869, s. 1, CL. 12)—INTEREST IN IM-
MOVEABLE PROPERTY.

[13 B. L. R., 312]

IMMOVABLE PROPERTY—continued.**Alienation of—**

See MORTGAGE—FORM OF MORTGAGE.
[I. L. R., 2 Bom., 231]

Bond creating charge on—

See CASES UNDER REGISTRATION ACT, 1877,
s. 17.

See CASES UNDER REGISTRATION ACT,
1871, s. 49.

Document relating to—

See CASES UNDER REGISTRATION ACT,
1877, ss. 17 AND 49.

**inherited by paternal grand-
mother from grandson.**

See HINDU LAW — STRIDHAN—DESCRIP-
TION AND DEVOLUTION OF STRIDHAN.
[I. L. R., 1 All., 661]

Interest in—

See CASES UNDER LIMITATION ACT, 1877,
ART. 144 (1871, ART. 145; 1859, s. 1,
CL. 12)—INTEREST IN IMMOVABLE PRO-
PERTY.

See REGISTRATION ACT, 1871, s. 18.
[I. L. R., 4 Calc., 61]

See SALE IN EXECUTION OF DECREE—IM-
MOVABLE PROPERTY.
[I. L. R., 1 All., 348
9 Bom., 64]

situated in different districts.

See PRACTICE—CIVIL CASES—LEAVE TO
SUE OR DEFEND. I. L. R., 3 Calc., 370

IMPARTIBILITY.

See CASES UNDER HINDU LAW—CUSTOM
—IMPARTIBILITY.

IMPARTIBLE ESTATE.

See CASES UNDER HINDU LAW—CUSTOM
—IMPARTIBILITY.

See CASES UNDER HINDU LAW—INHERIT-
ANCE—IMPARTIBLE PROPERTY.

See HINDU LAW—PARTITION—REQUI-
SITES FOR PARTITION.
[I. L. R., 1 Mad., 312]

See PENSIONS ACT, 1871.
[I. L. R., 2 Bom., 346]

See RESUMPTION—RIGHT TO RESUME.
[I. L. R., 5 Calc., 113
22 W. R., 225]

IMPOTENCE.

See HINDU LAW—GUARDIAN—RIGHT OF
GUARDIANSHIP. I. L. R., 1 All., 549

See HINDU LAW—MARRIAGE—RESTRAINT
ON OR DISSOLUTION OF MARRIAGE.
[I. L. R., 1 All., 549]

IMPRISONMENT.

See ARMS ACT (XXXI OF 1860).
[I. L. R., 1 Bom., 308]

See CONTEMPT OF COURT—CONTEMPTS
GENERALLY. I. L. R., 4 Calc., 655

See CONTEMPT OF COURT—PENAL CODE,
s. 174. 2 Mad., 319

See DURESS. I. L. R., 1 Calc., 330

See EXECUTION OF DECREE—EFFECT OF
REPEAL OF ACT PENDING SUIT.
[I. L. R., 2 Bom., 148]

See RIGHT OF SUIT—TORTS.
[3 Agra, 390]

See CASES UNDER SENTENCE—IMPRISON-
MENT.

IMPROVEMENTS.

See SALE FOR ARREARS OF REVENUE—
PROTECTED TENURES.
[I. L. R., 3 Calc., 293
I. L. R., 3 Calc., 110]

Occupier of land without title.

—*Right to compensation for improvements.*—Where
a person had held a property on a false title, and the
rightful owner had recovered possession after much
trouble,—*Held* that the former was not entitled to
compensation for improvements which he had made
for his own convenience, and which were not made as
the latter would have required. WAHEDDOOLAH v.
GOLAM AKBUR. 25 W. R., 205

See FUREUND ALI KHAN v. AKA ALI MAHOMED
[3 C. L. R., 194]

INAM COMMISSIONER.

—*Certificate of Effect of.*—*Mad-
ras Reg. IV of 1831.*—The certificate of the Inam
Commissioner does not afford conclusive evidence of
the title of the person to whom it was granted, nor
is his decision one over which the Civil Courts have
no jurisdiction. His duties were not of a judicial
character, but he was authorised to deal with those in
possession of inams on certain terms varying with the
nature of the holding which incidentally he was to
determine, but for the prescribed purpose only, the
nature of the title by which the person whom he
found in possession actually held it. *Sundaramurti
Nudali v. Vallinayaki Ammal*, 1 Mad., 465, distin-
guished. *Vissappa v. RAMAJOGI*. 2 Mad., 341

Decision of—

See ACT XI OF 1852.
[I. L. R., 2 Bom., 529
10 Bom., 471]

See JURISDICTION OF CIVIL COURT.
[2 Mad., 327]

INAMDAR.

See ENHANCEMENT OF RENT—RIGHT TO
ENHANCE. 6 Bom., A. C., 23
[I. L. R., 3 Bom., 141, 348]

INAMDAR—continued.

See RESUMPTION—EFFECT OF RESUMPTION . . . 1 Bom., 22

[I. L. R., 9 Bom., 419
I. L. R., 10 Bom., 112]

——— *Rights of common.*—Unless the terms of his inam grant authorise an inamdar to enclose a piece of land used immemorially as pasture ground by the inhabitants of his inam village, he cannot do so at will merely by virtue of his being an inamdar. *VISHVANATH v. MAHADAJI*. I. L. R., 3 Bom., 147

INCOME, HINDU WIDOW'S RIGHT TO—

See CASES UNDER ACCUMULATIONS.

INCOME, PURCHASE OF PROPERTY OUT OF—

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION OF INCOME AND ACCUMULATIONS.

[7 B. L. R., 93]

INCOME TAX.

See ROAD CESS ACT.

[I. L. R., 4 Calc., 576]

INCOME TAX ACT (XXXII of 1860).

See ESTOPPEL—STATEMENTS AND PLEADINGS . . . 6 W. R., 252
[24 W. R., 173]

See RIGHT OF SUIT—INCOME TAX.

[11 W. R., 425]

——— (IX of 1869), ss. 24, 25, 27.—*Appeal in criminal case.—Failure to make payment.—Sanction of Collector and discretion of.*—There were strong grounds for urging that the Legislature intended that convictions under sections 24 and 25, Act IX of 1869, should be summarily disposed of by the Magistrate, but the Court was not prepared to hold that the right of appeal was taken away. No jurisdiction was given to the Judge to reverse a conviction under these sections because he may regard it as one of hardship, nor had he to determine whether or not the failure to pay was in pursuance of an intention to avoid payment or not. By failing to make payment within the time specified in the notice, the tax-payer was guilty of an offence within the terms of section 25, and subsequent payment did not take the case out of the provisions of that section. To render such a conviction valid it must be shown that the prosecution was instituted at the instance of the Collector, and the mere sending on the tehsildar's report, with an expression of the Collector's general desire to prosecute defaulters, cannot be held tantamount to the institution of a prosecution at the instance of the Collector. The provisions of section 27 seem to imply that the Collector ought in each case to exercise his discretion as to whether a prosecution should be instituted. *QUEEN v. CHET RAM*
[2 N. W., 113]

INCOME TAX ACTS (IX of 1869 and XXIII of 1869).

See APPEAL IN CRIMINAL CASES—ACTS—INCOME TAX ACT . 14 W. R., Cr., 71

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[7 Bom., Cr., 76
14 W. R., Cr., 70]

INCOMPETENCE.

See MASTER AND SERVANT.

[I. L. R., 2 Calc., 33
Cor., 76: 2 Hyde, 166]

INCORPOREAL HEREDITAMENT.

See FISHERY, RIGHT OF.

[12 B. L. R., 210]

INCUMBRANCE, NOTICE OF—

See VENDOR AND PURCHASER—NOTICE.

[I. L. R., 1 Bom., 237
I. L. R., 7 All., 590]

INCUMBRANCES.

See CASES UNDER SALE FOR ARREARS OF RENT—INCUMBRANCES.

See CASES UNDER SALE FOR ARREARS OF REVENUE—INCUMBRANCES.

——— *Notice of—*

See VENDOR AND PURCHASER—NOTICE.

[I. L. R., 1 Bom., 237
I. L. R., 7 All., 590]

——— *Power of creating—*

See GHATWALI TENURE.

[6 B. L. R., 652]

INDEMNITY BOND.

See STAMP ACT, 1869.

[I. L. R., 1 Mad., 133]

INDEMNITY NOTE GIVEN TO RAILWAY COMPANY BY CONSIGNEE OF GOODS.

See STAMP ACT, 1879; SCH. I, ART. 5.

[I. L. R., 5 Bom., 478]

INDIAN COUNCILS ACT.

——— 24 and 25 Vict., c. 67.—*Circular orders passed by Judicial Commissioner of Punjab.*—The circular orders as to the liability of Government for debts of rebels, issued by the Judicial Commissioners of the Punjab, were not laws within the meaning of 24 and 25 Vict., c. 67. *SALIGRAM v. SECRETARY OF STATE*

[12 B. L. R., 167: 18 W. R., 369
L. R., I. A., Sup. Vol., 119]

——— s. 22—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—SUBSTANTIAL QUESTION OF LAW.

[I. L. R., 1 Calc., 431]

INDIAN COUNCILS ACT, s. 22—continued.

See JURISDICTION OF CRIMINAL COURT—
GENERAL JURISDICTION.

[I. L. R., 3 Calc., 63
I. L. R., 4 Calc., 172]

INDICTMENT.

See CASES UNDER CHARGE.

INDIGO CONCERN.

See RIGHT OF OCCUPANCY—ACQUISITION
OF RIGHT—PERSONS BY WHOM RIGHT
MAY BE ACQUIRED. 25 W. R., 117
[I. L. R., 11 Calc., 501]

——— Mortgagee in possession after
foreclosure.—*Liability for rent.*—The mortgagee
of an indigo factory foreclosed and took possession of
the concern in the month of Jeyt 1282. The rents
due from the ryots for the year 1282 became due at
the end of Jeyt 1282, and were collected by the mort-
gagee; the rents for 1282 due to the landowners from
the owners of the indigo concern also became due
at the end of Jeyt 1282. *Held* that the mortgagee
in possession was liable for them. *MACNAGHTEN v.*
BHAKAR SINGH . . . 2 C. L. R., 323

INDIGO ESTATE.

See LIEN . . . I. L. R., 2 Calc., 58
[11 W. R., 194]

INDIGO FACTORY.

——— Lien by custom for price of
seed.—*Liability of mortgagee of factory in pos-
session.*—*A.* sold to *B.*, the proprietor of an indigo
concern, of which *C.* was a mortgagee, certain bags
of indigo seed. The agreement of sale contained no
provision pledging the crop of indigo, the product of
the seed, as a security for its price. Subsequent to the
sale, and after the seed had been planted, *C.*, under a
decree on his mortgage, obtained possession of *B.*'s
factory. In a suit by *A.* against *B.* and *C.* for the
price of the indigo seed,—*Held* that, in the absence of
any agreement by *C.* to pay the debts of *B.*, *C.* could
not be held liable. There is no lien by custom upon
an indigo factory, or upon the produce of an indigo
factory, in respect of any debt of the factory. *MONO-*
HUB DASS v. MCNAGHTEN

[I. L. R., 3 Calc., 231]

Assignment of—

See VENDOR AND PURCHASER—PUR-
CHASERS, RIGHTS OF.

[B. L. R., Sup. Vol., 54
10 W. R., 311]

INFANTICIDE.

——— Infanticide Act, VIII of 1870, s.
2.—*Rules made by Local Government, North-West-
ern Provinces, Rule VI.—Act XVI of 1873, s. 8,
cl. (3).*—*Departures of women of proclaimed fami-
lies from their homes.—Omission to report such de-
partures.*—Although Rule VI of the Rules framed
by the Government of the North-Western Provinces

**INFANTICIDE.—Infanticide Act, VIII of
1870, s. 2—continued.**

under Act VIII of 1870 (Infanticide Act), section 2,
declares it to be the duty of the village chaukidar to
report on the occasion of his periodical visit to the
police station, not only the occurrence, among pro-
claimed families in the village, of births, of the
deaths of infants, and of the removal of pregnant
women to other villages, but also "other deaths, re-
movals, and arrivals," this last duty is not cast upon
him by the provisions of the Infanticide Act itself;
for Rule VI is not on this point consistent with the
Act. *Held*, therefore, that a chaukidar who had omit-
ted to report the departure of a woman of a proclai-
med family from her home was not guilty of an offence
under the Infanticide Act. *Held* also, that the heads
of proclaimed families are not bound by any of the
rules framed under the Infanticide Act to give in-
formation to the chaukidar regarding the departure
of the women of their families. *EMPERESS v. BHU-*
PAL I. L. R., 6 All., 380

INFANT.

See CASES UNDER GUARDIAN.

See CASES UNDER MINOR.

See PAUPER SUIT—SUITS.

[11 B. L. R., 373
I. L. R., 3 Mad., 3]

——— Liability of, for debts of ances-
tral business carried on by guardian.

See HINDU LAW—JOINT FAMILY—DEBTS
AND JOINT FAMILY BUSINESS.

[I. L. R., 3 Calc., 788]

INFANT MARRIAGES.

See HINDU LAW—MARRIAGE—INFANT
MARRIAGE, THEORY OF.

[I. L. R., 1 Calc., 289]

**INFORMATION OF COMMISSION OF
OFFENCE.**

See APETMENT . . . 4 B. L. R., A. Cr., 7

See CASES UNDER CRIMINAL PROCEDURE CODE,
1882, s. 45 (1872, s. 90).

See PENAL CODE, s. 217.

[I. L. R., 1 Mad., 266]

See REMAND—CRIMINAL CASES.

[9 B. L. R., Ap., 31]

1. ——— Duty of Village Munsif.—The
Village Munsif is bound to report the commission of
all offences committed in his village to such person
and in such manner as may be most likely to be
effectual for the apprehension of the offenders.
ANONYMOUS 3 Mad., Ap., 31

2. ——— Duty of karnam of village.—
The karnam of a village is not bound to report the
commission of offences other than those specified in
section 138 of the Criminal Procedure Code. *ANONY-*
MOUS 3 Mad., Ap., 31

INFORMATION OF COMMISSION OF OFFENCE—continued.

3. — Obligation to give information.—*Penal Code, s. 176.*—Section 176 of the Penal Code applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation. *IN THE MATTER OF PHOOL CHUND BROJOBASSE*

[16 W. R., Cr., 35

IN THE MATTER OF THE PETITION OF LUCHMUN PERSHAD GORGO . 18 W. R., Cr., 32

4. — Presumption of knowledge of offence.—*Penal Code, s. 176.*—*Refusal to join in offence.*—The refusal of a person to join in a dacoity does not imply a knowledge on his part of the commission of that offence, or render him liable to punishment under section 176 of the Penal Code for intentional omission to give notice or information for the purpose of preventing the commission of an offence. *QUEEN v. LAHAI MUNDUL* . 7 W. R., Cr., 29

5. — Omission to report offence.—*Penal Code, ss. 118, 176.*—*Criminal Procedure Code, 1861, s. 138.*—*Held*, that the prisoner could not be punished under section 118 of the Penal Code, as there was no omission of an act which he was bound to perform which facilitated the commission of an offence; but that he should be convicted under section 176, Penal Code, as he was bound to report the offence under section 138, Act XXV of 1861, after he was informed of it. *GOVERNMENT v. KESREE*

[1 Agra, Cr., 37

6. — *Criminal Procedure Code, 1882, ss. 87, 88.*—*Penal Code, s. 176.*—*Omission to give information to police.*—*Proclamation of offender.*—*Presumption.*—*Omnis presumuntur rite esse acta.*—*Application of maxim.*—*K.* was convicted, under section 176 of the Penal Code, of having intentionally omitted to inform the police of the presence of *V.*, a proclaimed offender, at a certain village. It was presumed by the Court that *V.* was a proclaimed offender because it was proved that the property of *V.* had been attached under the provisions of section 88 of the Code of Criminal Procedure, 1882. *Held* that the prosecutor was bound to prove the fact of proclamation. A person legally bound to give information to the police of the presence of a proclaimed offender at a certain place ought not to be prosecuted for omitting to give such information where the police are already aware of the fact. *IN RE PANDYA* . I. L. R., 7 Mad., 436

7. — Omitting to report a sudden, unnatural, or suspicious death.—*Penal Code (Act XLV of 1860), ss. 176, 201.*—*Criminal Procedure Code (Act X of 1882), s. 45.*—Before an accused can be convicted of an offence under section 201 of the Penal Code, it must be proved that an offence, the evidence of which he is charged with causing to disappear, has actually been committed, and also that the accused knew or had information sufficient to lead him to believe that the offence had been committed. *Empress of India v. Abdul Kadir*,

INFORMATION OF COMMISSION OF OFFENCE—Omitting to report a sudden, unnatural, or suspicious death—continued.

I. L. R., 3 All., 279, followed. *Held* (per PRINSEP and MACPHERSON, JJ.)—It is not necessary, in order to support a conviction under section 176 of the Penal Code against a person falling within the provisions of section 45 of the Criminal Procedure Code, for not giving information of an occurrence falling under clause (d) of that section, to show that the death actually occurred on his land, when the circumstances disclosed show that a body has been found under circumstances denoting that the death was sudden, unnatural, or suspicious; the finding of the body being a fact from which a Court might reasonably infer, in the absence of evidence to the contrary, that the death took place there. *Held* (per MITTER, J.)—It is necessary, to secure a conviction in the latter case, to prove that the death took place or occurred in the village or on the land of the accused, and the finding of a body there does not of itself afford that proof. *MATUKI MISSEER v. QUEEN-EMRESS*

[I. L. R., 11 Calc., 619

8. — Conviction of giving false information.—*Penal Code, s. 203.*—To justify a conviction for giving false information with respect to an offence under section 203 of the Penal Code, it must be proved, not only that the person charged had reason to believe that an offence had been committed, but that the offence had actually been committed, and that the accused knew or had reason to believe that the offence had been actually committed. *QUEEN v. JOYNABAIN PATRO* . 20 W. R., Cr., 68

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[3 B. L. R., A. C., 276

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[I. L. R., 1 Bom., 97

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[I. L. R., 1 Mad., 312

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[2 B. L. R., A. C., 199

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[10 B. L. R., 341

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[I. L. R., 2 Bom., 252

1. UNDER CIVIL PROCEDURE CODES.

1. ——— Interim injunction.—Principles on which it is granted.—The Court, in granting an *ad interim* injunction, will first see that there is a *bond fide* contention between the parties, and then on which side, in the event of obtaining a successful result to the suit, will be the balance of inconvenience if the injunction do not issue, bearing in mind the principle of retaining immoveable property *in statu quo*. On those principles an injunction was granted to restrain the defendants from "selling, alienating, or otherwise disposing of" certain houses, the subject of a suit, in which the plaintiff, claiming under the will of his father, sought to set aside pro-

INJUNCTION—continued.**1. UNDER CIVIL PROCEDURE CODES—continued.****Interim injunction—continued.**

ceedings in execution taken by an executor (under whom the defendants claimed) after the death, but before the grant of probate of the will of the deceased, and by which proceedings the executor had seized the houses in satisfaction of his own debt. *GOMES v. CARTER*. . . 1 Ind. Jur., N. S., 411

2. ——— Power to make order for injunction.—Civil Procedure Code, 1859, s. 92.—Court in which suit is pending.—Jurisdiction.—Where a Court has no jurisdiction to make an order, it can have no jurisdiction to modify such order. It was not lawful for a District Court, under section 92 of Act VIII of 1859, to issue an injunction to stay waste, &c., or to appoint a receiver or manager, in respect of property in dispute, in a suit pending in a subordinate Court. The District Judge might withdraw the suit from the subordinate Court to the District Court under section 6 of the Code, and then make orders in accordance with the terms of section 92. *Semble*.—A Court having jurisdiction to make orders under section 92 had no right to make such orders without some evidence that the property in dispute in the suit was in danger of being wasted, damaged, or alienated by any party to the suit. *DHUNDIRAM SANTUKRAM v. CHANDA NABAI*

[2 Bom., 103; 2nd Ed., 98

3. ——— Civil Procedure Code, 1859, s. 92.—Section 92, Act VIII of 1859, applies to a case where it is shown to the satisfaction of the Court that the defendant in possession is likely to endamage or make away with any property in dispute in the suit, and empowers the Court in such a case to issue an injunction to the defendant to refrain from the particular act complained of, and, in case of necessity, to appoint a receiver or manager of so much of the property only as is in dispute. *JOY-NARAIN GHOSH v. SHIBPRESHAD GHOSH*

[6 W. R., Mis., 1

4. ——— Civil Procedure Code, 1859, s. 92.—Ground for granting injunction.—The power given to the Civil Court by section 92, Act VIII, 1859, of issuing injunctions and appointing a receiver *pendente lite*, was intended to be exercised only in cases where property, which it was essential should be kept in its existing condition, was in danger of being destroyed, damaged, or put beyond the power of the Court. *MUN MOHINEE DASSEE v. IOHAMOKE DASSEE* . . . 13 W. R., 60

5. ——— Expression of intention to take attached property.—Ground for granting injunction.—In a suit to recover a specific sum of money which had been attached by the Magistrate, where defendant expressed his intention to take the money for the purpose of investing it in trade,—*Held* that defendant's admission was sufficient evidence to show that the money was in danger of being alienated within the meaning of section 92 of the Code of Civil Procedure. *GOLUCK CHUNDER GOOHO MOHIN CHUNDER GHOSH* . . . 13 W. R., 95

INJUNCTION—continued.**1. UNDER CIVIL PROCEDURE CODES—continued.****Power to make order for injunction—continued.**

8. ——— *Injunction as to property, Duration of.—Receiver.*—The power of a Court to attach property and to appoint a receiver extends only to the better management or custody of any property which is in dispute, and ceases when the suit comes to an end. An injunction in respect of property cannot be maintained after a claim is dismissed, or pending an appeal. **MOHMOODDIN v. AHMED HOSSEIN** . . . 14 W. R., 384

7. ——— An injunction could not be issued under section 92, Code of Civil Procedure, on a mere allegation that the defendant wished to realise debts by bringing actions in Court, without proof of an intention of waste, damage, or alienation. **PROSSUNO MOYSE DOSSER v. WOOMA MOYSE DASSEN** . . . 14 W. R., 409

8. ——— **Grant of injunction.—Stay of proceedings in mofussil against Court Receiver.**—Injunction granted by the Court to restrain proceedings in the mofussil against the Court Receiver. **BEER CHUND GOSSAI v. HOGG** . . . Cor., 56

9. ——— *Stay of sale.*—The plaintiffs, who were in possession of certain premises, brought a suit to restrain the defendant from selling a share in them which he had attached in execution of a decree upon a mortgage to him of that share, and to set aside the deed of mortgage. According to the plaintiffs' case, they (the plaintiffs) were in possession under a decree of Court obtained upon a mortgage executed to them by the executor of the will of the last proprietor under a power contained in the will, and the mortgagors to the defendant, who were the brother and the son of the testator, had no interest in the property at the time of their mortgage to the defendant. The plaintiffs applied for an *ad interim* injunction, and the Court granted the application. **RUPAL KHEITRY v. MAHIMA CHANDRA ROY** . . . 5 B. L. R., 254

SHREENARAIN CHUCKREBUTTY v. MILLER
[5 B. L. R., 254, note

10. ——— *Restraining execution of decree.—Family dwelling-house.—Suit for partition.*—A. obtained a decree against B. and others (Hindus), on a title of purchase from them, for possession of an undivided moiety of a dwelling-house, to the remaining moiety of which C. (a Hindu) alleged he was jointly entitled, and that he and his family were in possession. On A.'s proceeding to obtain execution of his decree, C. brought a suit, alleging that A. had obtained no title under his purchase, and praying for partition of the property. On application for an *interim* injunction to restrain A. from executing his decree pending the partition suit, the Court granted the application. **ANANT-NATH DEY v. MACKINTOSH** . . . 6 B. L. R., 571

11. ——— **Stay of execution of decree.**—*Civil Procedure Code, 1859, s. 92.*—The purchaser

INJUNCTION—continued.**1. UNDER CIVIL PROCEDURE CODES—continued.****Stay of execution of decree—continued.**

of a share of a decree who has failed in the endeavour to get the Court executing it to put him upon the record for the purpose of obtaining the benefit of the decree, has no right to an injunction to prevent the decree-holder from executing the whole decree without regard to the sale, even if the purchase is made on behalf of the judgment-debtor; he could only get a right to an injunction of the kind if the sale amounted to a release from the decree-holder to the judgment-debtor from his liability under the decree. **ROHIMUNNISRA v. LEAKUT ALI KHAN**

[23 W. R., 506

12. ——— **Stay of sale in execution of decree.—Civil Procedure Code, 1859, s. 92.**—Certain immovable property was attached in execution of a decree obtained by L. against N. A claim was thereupon put in by S., but his claim was refused, and he brought a suit as provided by section 246, Act VIII of 1859, against L. to establish his right, and applied for and obtained an injunction under section 92 restraining L. from proceeding to execute his decree against the property in dispute. N. was subsequently made a party to the suit under section 78 of Act VIII of 1859. From the order granting the injunction L. appealed to the High Court. *Held* that this was not a proper case for the issue of an injunction under section 92. There was nothing to show that the property in dispute was in danger of being wasted, damaged, or alienated by L., nor was the property in his possession. The proper course would have been for S. to have applied by petition for a postponement of the sale, the attachment continuing. The Court ordered the injunction to be dissolved, and that an order should be entered on the execution proceedings staying the sale pending S.'s suit, leaving it open to L., in case there should be undue delay, to make application to the Court for an immediate sale. **LUTCHMEPUT SINGH v. SECRETARY OF STATE**

[11 B. L. R., Ap., 28: 20 W. R., 11

See DOORGA CHURN CHATTERJEE v. ASHUTOSH DUTT . . . 24 W. R., 70

13. ——— *Civil Procedure Code, 1882, ss. 492, 494.—Temporary injunction.—Practice.—Notice to opposite party.*—Where a Court made an order granting a temporary injunction under section 492 of the Civil Procedure Code, without directing notice of the application for injunction to be issued to the other side, and its order directing stay of sale of property in execution was passed *ex parte*, without the other side being given an opportunity to show cause,—*Held* that the order was irregular. Where ancestral property was attached in execution of a decree, and a son of the judgment-debtor instituted a suit to establish his right to the property and made an application for a temporary injunction directing stay of sale pending the decision of the suit,—*Held* that, inasmuch as what was advertised to be sold was the rights and interests of the plaintiff's father in the property, and it could not be

INJUNCTION—continued.**1. UNDER CIVIL PROCEDURE CODES—
continued.****Stay of sale in execution of decree—
continued.**

said that the property was being "wrongfully sold in execution of a decree," and the application on the face of it disclosed no sufficient ground to warrant an order under section 492 of the Civil Procedure Code being made as prayed, the temporary injunction ought not to have been granted. *AMOLAK RAM v. SAHIB SINGH* . . . I. L. R., 7 All., 550

14. ——— Injunction in one suit pending appeal in another suit.—*Interim injunction.—Civil Procedure Code, Act XIV of 1882, ss. 492, 546.*—*A.* brought a suit and obtained a decree against *B.* on a mortgage-bond in the Court of a Subordinate Judge, which decree was confirmed by the High Court on appeal. *A.* then applied for execution. In the execution proceedings the sons of *B.* intervened claiming a portion of the properties attached; this claim was dismissed, and the sons of *B.* brought a regular suit before the same Subordinate Judge to have their rights to the property declared, and obtained an *interim* injunction restraining *A.* from executing his decree pending the decision of their suit. This suit was dismissed, and the sons of *B.* appealed to the High Court. *A.* again applied for execution of his mortgage-decree, whereupon the sons of *B.* applied for a further injunction restraining *A.* from executing his decree pending their appeal to the High Court: this application was granted. *Held* that the Subordinate Judge had no right to restrain the decree-holder from executing his decree, merely on the possibility of the Appellate Court reversing his decision. *GOSAIN MONEY PURSE v. GURU PRESHAD SINGH* . I. L. R., 11 Calo., 146

15. ——— Injunction to stay sale pending suit to establish title.—*Civil Procedure Code, 1882, s. 492.—Civil Procedure Code, 1859, s. 92.—Superintendence of High Court under s. 622, Civil Procedure Code, 1882.*—A claim by *R.* to certain property which had been attached by *B.* in the course of execution proceedings in the Court of the First Subordinate Judge of Dacca having been rejected, *R.* instituted a suit in the Court of the Second Subordinate Judge to establish his title to the property. In that suit he applied to the Court in which his suit was brought for an injunction under section 492 of the Civil Procedure Code to stay the sale of the property attached by *B.* in the execution proceedings; but that application was rejected, and *R.* thereupon applied for and obtained from the Court of the First Subordinate Judge an order staying the sale of the attached property until the hearing of the suit brought by him to establish his right to it. *Held*, in an application under section 622 of the Code to set the latter order aside, that section 492 of the Code of 1882 has, and was intended to have, a wider application than section 92 of Act VIII of 1859 had, and provides a remedy where property is "in danger of being wrongfully sold;" if the circumstances justified it, an order could have been obtained under that section from the Court of the Second

INJUNCTION—continued.**1. UNDER CIVIL PROCEDURE CODES—
continued.****Injunction to stay sale pending suit to
establish title—continued.**

Subordinate Judge to stay the sale. There being this alteration in the law, and such a remedy provided, and no express provision in the Code for stay of execution by a Court executing a decree on the application of a third party, the order of the First Subordinate Judge was made without jurisdiction, and should be set aside. *IN THE MATTER OF THE PETITION OF BROJENDRA KUMAR RAI CHOWDHURI. BROJENDRA KUMAR RAI CHOWDHURI v. RUPALL DOSH* . . . I. L. R., 12 Calo., 516

16. ——— Contradictory affidavits.—*Irreparable injury.—Letters Patent, 1862 and 1865.—Civil Procedure Code, 1859, ss. 92 and 94.—Appealable order.*—The plaintiffs being in possession of a certain mud dock used for docking and repairing vessels, and being threatened by the defendants with a suit to eject them therefrom, sued for specific performance of an alleged agreement between themselves and the defendants, under which they were, on certain terms, entitled to the use and occupation of the dock until the repairs of two of their vessels were completed; and for an injunction to restrain the defendants from ejecting them until the completion of the repairs. In support of an application for an *interim* injunction to restrain the defendants from taking proceedings to eject the plaintiffs until their suit had been heard, the affidavits of the plaintiffs stated that on the faith of the agreement one of their steamers had been docked and taken to pieces; that the repairs could not be finished for a considerable time, and that the vessel could not be removed from the dock without great loss and irreparable injury to them. The affidavits of the defendants denied the making of the agreements alleged by the plaintiffs, and set forth another agreement, under which they alleged the plaintiffs had been in possession of the dock, and which agreement having come to an end they were entitled to eject the plaintiffs; they did not deny the loss to the plaintiffs which would be the result of moving the vessel before the repairs were completed, nor did they allege any delay in making the repairs, but they submitted that such loss would be the consequence of the plaintiffs' own act in docking their vessel without any final agreement having been come to between the parties. The dock was situated in the district of Hooghly, and the defendants' suit for possession, unless transferred to the High Court, would be tried in the Hooghly Court. There were facts which, in the opinion of the Court, went to show that the plaintiffs had acted *bona fide*. *Held (per MARKEE, J.)*, on the above facts, that inasmuch as the plaintiffs' statements, if true, raised a fair and substantial question for decision as to the rights of the parties, and looking to the inconvenience of allowing the same matter to be litigated simultaneously in different Courts between the same parties, the plaintiffs were entitled to an *interim* injunction restraining the defendants from bringing their suit until the plaintiffs' suit was heard. *Semble*,—An *interim* injunction may issue

INJUNCTION—continued.**1. UNDER CIVIL PROCEDURE CODES—continued.****Contradictory affidavits—continued.**

although there is a contradiction on the facts. On appeal the Court was of opinion that, under the circumstances, there was an equity which entitled the plaintiffs to be kept in quiet and undisturbed possession of the dock until the repairs were completed; and confirmed the order for an *interim* injunction, but modified it by restraining the defendants not from bringing their suit, but merely from executing any decree they might obtain therein until the plaintiffs should have had a reasonable time to complete the repairs of their vessel. Although by the Letters Patent of 1865, the provisions of Act VIII of 1859 were not expressly made applicable to the High Court, as was done by the Letters Patent of 1862, *semble*,—the order granting the injunction was an order under section 92, Act VIII of 1859, and therefore an appeal lay under section 94. **MORAN v. RIVER STEAM NAVIGATION COMPANY**

[14 B. L. R., 352]

17. ——— Suit for specific performance of agreement to give in marriage.—Civil Procedure Code, 1859, ss. 92, 93.—Sections 92 and 93 of Act VIII of 1859 are not applicable to a suit for specific performance of a contract to give in marriage, and the Court will not grant an *interim* injunction to restrain the defendant from making another marriage with a third person. **IN THE MATTER OF GUNPUT NARAIN SINGH**

[I. L. R., 1 Cal., 74]

S. C. GUNPUT NARAIN SINGH v. RAJUN KOOR
[24 W. B., 207]

2. SPECIAL CASES.**(a) ALIENATION BY WIDOW.**

18. ——— Interim injunction, Grounds for continuing to hearing.—Consent of next reversioner.—Rights of remote reversioners.—A Hindu died, leaving a widow and also leaving A., his immediate reversionary heir, and B. and C., more remote reversionary heirs. The widow obtained a certificate to collect debts, but such certificate did not empower her to deal with Government securities. D. instituted a suit against the widow on a promissory note alleged to have been executed in his favour by her late husband, and obtained a decree. A. then instituted a suit against the widow and D. to have the decree set aside on the ground of fraud and collusion. This suit was compromised by A.'s surrendering up his reversionary interest to the widow for a consideration. B. and C. now sued the widow and D. and A. for the purpose of having the first-mentioned decree set aside, for a declaration that the decree on the compromise was inoperative to establish or confirm the fraudulent decree, or to enlarge the powers of the widow to deal with the Government securities, and obtained an *interim* injunction. *Held* that, apart from the question as to whether an alienation by a widow and next reversioner without the consent of subsequent reversioners is binding on them,

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(a) ALIENATION BY WIDOW—continued.****Interim injunction, Grounds for continuing to hearing—continued.**

which question the Court was prepared to answer in the negative, it would, under the circumstances of the case, be an abuse of the discretion of the Court not to continue the injunction until the hearing, when the truth or falsity of the charges made by the plaintiffs could be investigated on oral evidence. **GOFFENATH MOOKERJEE v. KALLY DOSS MULLICK**

[I. L. R., 10 Cal., 225]

(b) BREACH OF AGREEMENT.

19. ——— Association of artisans for acquisition of gain.—Registration of association.—Illegal agreement.—Where more than twenty artisans signed an agreement, whereby they constituted themselves an association for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop, and dividing the prices of the work done amongst the members according to their skill, but which association was not registered as a company under Act X of 1866, *Held* that the Court could not grant an injunction to restrain the breach of such agreement. **BHIKAJI SABAJI v. BAPU SAJU** . I. L. R., 1 Bom., 550

20. ——— Agreement for a charter-party.—Interim injunction.—Threatened breach of charter-party.—Where a charter-party has been actually completed, the Court will, by injunction, prevent an employment of the ship inconsistent with the terms of the charter-party; but where there is only an agreement for a charter-party, no such injunction will be granted. **ABDUL ALLARAKHI v. ABDUL BACHA** . I. L. R., 6 Bom., 5

21. ——— Restraining partner from excluding co-partner from partnership.—Injunction granted to restrain a partner from excluding his co-partner from the partnership business and from doing any act to prevent its being carried on according to the articles. **VIRDACHELLA NATTAH v. RAMASWAMI NAYAKAN** . 1 Mad., 341

22. ——— Restraining co-sharer from cultivating indigo without consent.—Agreement not to grow indigo.—The Court refused to issue an injunction commanding a co-sharer in a certain village not to cultivate the *ijmali* land thereof without the consent of his co-sharers, or until the separation of his share by a *butwarrah*, because of alleged interference with the rights of the said co-sharers; holding that the remedy lay in an action for damages. **CROWDY v. INDER ROY** . 18 W. R., 408

(c) COLLECTION OF RENTS.

23. ——— Suit to restrain collection of rents.—Damage, Proof of.—An injunction to restrain the defendant from collecting, without any title, from the ryots of the plaintiff's estate, two annas rent over and above the full sixteen annas

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(c) COLLECTION OF RENTS—continued.****Suit to restrain collection of rents—continued.**

in the rupees, may be granted without proof of actual damage. *NADIRJUMMA CHOWDREY v. RAM CHUNDRE SURMA* **W. R., 1864, 362**

(d) DIGGING WELL.

24. ——— Restraining the digging of a well.—Zemindar.—Talookdar.—The digging of a well by a talookdar intermediate between the zemindar and the ryots is not an act of waste to restrain which the Court will issue an injunction. *MUGNESH-CHOWDREY v. GUNESH DUTT SINGH* [W. R., 1864, 275]

(e) EXECUTION OF DECREE.

25. ——— Stay of execution of decree.—*Court of co-ordinate jurisdiction.—Specific Relief Act (I of 1877).*—An injunction did not, under the law as it stood before the Specific Relief Act, 1877, lie against the decree-holder, by assignment or otherwise, to restrain him from executing a decree granted to him by a Court exercising co-ordinate jurisdiction with the Court in which the injunction was applied for, on the ground that the proceedings by which the decree was obtained against the person applying for the injunction were altogether illegal. The cases in which injunctions were granted by the Courts of Chancery in England against proceedings in other Courts, rested upon the assumption that the rights of the parties could not be enquired into, except through the Courts of Chancery, and are, therefore, not applicable to India. Injunctions to stay proceedings under the Specific Relief Act can only be granted in cases where the Court in which the proceedings are to be stayed is subordinate to that in which the injunction is sought. *DHURONIDHUR SEN v. AGRA BANK* . I. L. R., 4 Calc., 380; 2 C. L. R., 283; [3 C. L. R., 421]

26. ——— Restraining decree-holder from executing decree improperly or illegally obtained.—Order substituting judgment-debtor.—Sale or transfer of dena-powna.—A., the proprietor of an indigo concern, which comprised a patni taluq, after mortgaging the entire concern to B., allowed the patni taluq to be sold for arrears of rent under Regulation VIII of 1819; C., the darpatnidar of the taluq, whose rights were thus extinguished, then sued and obtained a decree for damages against A. After C. had obtained this decree against A., A. sold his equity of redemption in the entire mortgaged concern to B., and by this sale all the dena and powna, or liabilities and outstandings of the concern, were transferred from A. to B. C. then, after notice to B., obtained an order by which B. was made the judgment-debtor in the place of A. B. took no proceedings within one year to set aside this order; but, after the lapse of three years, upon

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(e) EXECUTION OF DECREE—continued.****Restraining decree-holder from executing decree improperly or illegally obtained—continued.**

C. attempting to execute his decree, instituted the present suit to set aside the order, and for an injunction to restrain B. from executing the decree against him. *Held, 1st*, that the purchase by B. of the dena-powna of the indigo concern of which A. had been the proprietor, did not make B. liable to pay the amount, for which C. had obtained a decree against A., as damages for the extinguishment of his darpatni right; *2nd*, that the order substituting B. for A. in the suit for damages was illegal; *3rd*, that although B. was barred by limitation from suing to set aside that order, he was entitled to an injunction restraining C. personally from executing the decree against him. *DHURONIDHUR SEN v. AGRA BANK* [I. L. R., 5 Calc., 86; 4 C. L. R., 434]

(f) INTRUSION UPON OFFICE.

27. ——— Office of vatandar joshi.—*Damages against intruder into office.—Receipt by another of fees properly due to vatandar joshi.*—The vatandar joshi of a village has the right to recover pecuniary damages from a person who has intruded upon his office and received fees properly payable to him; but the Court will not grant any injunction against such intruder which would have the effect of forcing upon any section of the community the services of a priest whom they are unwilling to recognise, and forbidding them to employ a priest whose ministrations they desire. *RAJA VALAD SHIVAPA v. KRISHNABHAT* . I. L. R., 3 Bom., 232

(g) NUISANCE.

28. ——— Nuisance from cotton mill.—Noise.—Smoke and stuff of mill.—Damages.—Combination of injunction and damages.—Specific Relief Act (I of 1877).—Delay.—Acquiescence.—Right of reversioners to sue.—The plaintiffs were owners of the Grant Buildings situated at Colaba in Bombay. The said buildings comprised two three-storied blocks known respectively as the eastern block and the western block. Each block consisted of four divisions, those in the eastern block being numbered respectively Nos. 1, 2, 3, and 4, and those in the western block being numbered Nos. 5, 6, 7, and 8. Each block contained thirty-four sets of rooms. The plaintiffs became owners of the Grant Buildings in 1868, and had ever since derived a considerable income from the rooms by letting them as dwelling-rooms to Europeans at an average rent of Rs50 a month. The defendants were owners of an adjacent cotton mill known as the Nicol Mill, which was erected in 1873. Prior to 1873 the site of the mill was occupied by the buildings of the Hydraulic Press Company, which were erected in 1868. These premises were in 1873 purchased by the Nicol Press and Manufacturing Company, who thereupon proceeded to build the Nicol Mill. On the 8th August 1874, the erection of the

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(g) NUISANCE—continued.****Nuisance from cotton mill—continued.**

mill having then just commenced, the plaintiffs' solicitor wrote to the Secretaries of the Nicol Press and Manufacturing Company as follows: "It is rumoured that it is intended to carry on the business of spinning and weaving in the buildings now being erected. A business of this nature carried on so close to the Grant Buildings will render our clients' property comparatively valueless, and we are instructed to bring this fact to your notice and to say that the Bank will not permit any business of the kind to be carried on to the detriment of their property." To this letter the Company replied that the business of the Hydraulic Press Company had been previously carried on by that Company on the same site without any remonstrance either from the plaintiffs or from the occupants of the Grant Buildings; that the value of the plaintiffs' property would be increased, not depreciated, by the erection of the new mill; that the plaintiffs had been aware of the intention of the Nicol Company to convert the Hydraulic Press Company's premises into a spinning and weaving mill, and that they should have entered their protest months before; that under the circumstances the plaintiffs had no right to interfere in the working of the mill, and that the Nicol Company therefore intended to continue the erection of the building and to use it, when completed, for the purposes of the Company. The mill was completed and commenced working in June 1876, with 18,644 spindles, there being room and engine-power sufficient for 40,000 spindles and 250 additional looms. In March 1877, the number of spindles was increased to 19,832, which was the number in the mill at the date of suit. Since March 1874, the eastern block of the Grant Buildings had been closed and not offered to tenants, the demand for rooms of that character having been only sufficient to fill the western block. In 1878, however, the demand again increased and the eastern block was reopened and let to tenants,—Division No. 1 being opened in January 1878 and Division No. 2 in March 1878, Division No. 3 in November and Division No. 4 in December 1878. Complaints having been received from the tenants of these divisions of the nuisance arising from the Nicol Mill, the plaintiffs in December 1878 sent instructions to counsel to prepare a plaint against the Nicol Press and Manufacturing Company. On the 26th of that month, however, a resolution was passed to wind up the Company and the working of the mill was discontinued. In consequence of this no plaint was prepared, but the plaintiffs' solicitor sent a notice to the liquidators of the Company referring to what had taken place and warning them not to sell the mill without giving the purchaser notice of the plaintiffs' intention to take proceedings against any person who should recommence to work the mill. Advertisements to that effect were also published in the English and native daily newspapers. On the 9th August 1880, hearing that the mill was to be put up to auction, the plaintiffs sent to the liquidators a similar notice. On the 25th August 1880, the defendants'

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(g) NUISANCE—continued.****Nuisance from cotton mill—continued.**

mill was put up for sale and the notices were read out by the plaintiffs' solicitor. The defendants were present and heard the notice read. The defendants purchased the property for Rs. 61,000, and the sale was confirmed by the Court. On the 1st January 1881, the mill recommenced working, having been idle for two years. On the 26th January 1881, a notice was sent to the defendants to discontinue the working of the mill on pain of a suit. The defendants replied denying the nuisance and stating that any suit would be defended. The suit was filed on the 5th February 1881. The plaintiffs alleged a nuisance, especially to the tenants of the eastern block of the Grant Buildings, arising from the noise, smoke, and cotton fluff and smells issuing from the defendants' mill. They complained that the said nuisances would be much increased when the defendants carried out their intention of completing the number of spindles and looms for which the mill was built. They prayed for an injunction and Rs. 1,000 damages. The defendants denied the alleged nuisance and contended that the plaintiffs were debarred from the relief claimed. At the time of the filing of the suit the only rooms in the Grant Buildings that were vacant were the following: In the east block two rooms in Division No. 1, one room in Division No. 3, and one room in Division No. 4. In the west block five rooms were vacant. The total net rental of the vacant rooms was Rs. 350 a month, and of the occupied rooms Rs. 2,410. Evidence was given that many tenants had vacated their rooms in the east block on account of the nuisance experienced from the mill, but that the demand for rooms was so great that other tenants were found to fill the vacancies almost as soon as they occurred. At the time of the hearing of the suit four rooms were vacant in the east block and none in the west block. Between the date of the filing of the suit and the hearing, changes had been effected in the mill which decreased the nuisance,—e.g., new boilers were erected, smokeless coal was used, screens, steam-jets and baffles were introduced. In order to diminish the noise, double fixed windows were put in on the north side of the mill and the cog-wheeled gearing was bricked up. At the hearing it was contended—(1) that the mill was no nuisance; (2) that even if it was, the plaintiffs were debarred by their conduct from objecting; (3) that the plaintiffs being reversioners were not entitled to sue. *Held*, on the evidence, that the plaintiffs were not debarred from suing by acquiescence or laches, but that the defendants and the previous owners of the mill had been at every stage acquainted with the plaintiffs' intention to resist the working of the mill if it proved to be a nuisance; (2) that the working of the mill was a nuisance to the occupants of Divisions 2, 3, and 4 by reason of (a) the noise and also by reason of the (b) smoke and cotton fluff issuing from the mill during the monsoon; (3) that the only cause of action on which the plaintiffs could rely in support of their claim to an injunction was the diminution in the

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(g) NUISANCE—continued.****Nuisance from cotton mill—continued.**

value of their property owing to the working of the mill being a nuisance in respect of the four rooms vacant in Divisions Nos. 2, 3, and 4, at the time of the filing of the suit; (4) that the efficacy of the changes and improvements made by the defendants after the filing of the suit for the purpose of diminishing the nuisance complained of depended so much on the good intention and constant personal care of the defendants and their servants that it ought not to influence the question of injunction when once the nuisance was proved to have existed; (5) that although (the plaintiffs being at the date of the suit entitled only to complain of the nuisance as to four out of sixty-eight sets of rooms) it might be said there was no material diminution of the value of the property arising from the nuisance, the Court in considering the propriety of granting an injunction would have regard to the fact that the injunction, if granted, would render it unnecessary for the plaintiffs to bring an action in respect of all the other rooms in Divisions Nos. 2, 3, and 4 after giving the tenants notice to quit, and so prevent that multiplicity of suits on which an injunction is authorised by section 54 of the Specific Relief Act. Under the special circumstances of the case, the question whether an injunction should go, should be dealt with as if the plaintiffs had a right of action in respect of all the rooms in Divisions Nos. 2, 3, and 4; (6) the only interest of the plaintiffs in the Grant Buildings being a personal interest and the only object of the plaintiffs having been to secure the highest value for their property, and considering that, from the nature of the case, an injunction, such as the plaintiffs prayed for, would place the defendants entirely in the power of the plaintiffs, the relief given to the plaintiffs should assume the form of pecuniary compensation rather than of an injunction, and directed further evidence to be taken as to the diminution in value of the plaintiffs' property caused or likely to be caused by the nuisance so far as it affected Divisions Nos. 2, 3, and 4 of the eastern block. After taking further evidence, the Court considered that the case would be best dealt with by a combination of damages and injunction; and made an order for an injunction to issue against noise, smoke, and cotton fluff so as to be a nuisance to the plaintiffs as owners or to their tenants for the time being of Divisions Nos. 2, 3, and 4. Such injunction not to issue in case the defendants should pay to the plaintiffs the sum of Rs 40,000 before the expiration of a fortnight from the date of the decree. In the event of the payment of the said sum to them, an injunction to issue restraining defendants from working the said mill otherwise than with closed double glass windows on the side next the Grant Buildings, and also restraining defendants from allowing any smoke or cotton fluff to issue so as cause such nuisance as aforesaid, with liberty to plaintiffs to apply in case the noise be materially increased beyond what it is at present. On appeal,—*Held per BAYLEY, C. J. (Acting), and WEST, J.,* that admitting that money compensation was a right

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(g) NUISANCE—continued.****Nuisance from cotton mill—continued.**

form of relief, it should be compensation measured by the premises not owned but occupied by the plaintiffs; in other words, the rooms unlet. It was only in respect of these that the plaintiffs were competent to sue, and they could not be entitled to compensation on a more extensive ground. It was only in respect of the rooms in question that the present suit and the decree therein could guard the defendants against further actions. An award of Rs 40,000 to the plaintiffs could not prevent any tenant of the rooms affected by the nuisance from suing the defendants on the same grounds as were taken by the plaintiffs in this suit. It would be unreasonable that the defendants should be made to pay as damages in bulk to persons not legally entitled what they might have to pay over again to those who are or may be entitled in detail. For the damages arising to the plaintiffs on account of the rooms unlet at the institution of the suit, Rs 1,000 would afford sufficient compensation, and the sum awarded should be reduced to that amount. The decree was varied accordingly, and a clause was also inserted distinctly providing against any increase of smoke, cotton fluff, or noise of machinery beyond what subsisted at the date of the decree; and further providing that in case any invention should be made by which the nuisance might easily be diminished, the decree was not to be deemed to prejudice the right, if any, the plaintiffs as owners or the tenants of the Grant Buildings possessed to require the defendants to introduce such invention into the said mill so as to cause the least annoyance reasonably possible. *LAND MORTGAGE BANK OF INDIA v. AHMEDBHAY HUBIBBHAY*. I. L. R., 8 Bom., 35

(h) OBSTRUCTION TO RIGHTS OF PROPERTY.

29. ——— Public tank, Right to repair.—Long user.—A tank for the use of the public having been dug by the ancestor of the plaintiffs with the leave of the owners of the village, stone steps and other permanent improvements to the tanks were constructed from time to time both by members of the family of the plaintiffs and by the ancestors of the defendants up to the year 1842, from which time till 1878 the conservancy and repairs of the tank were exclusively carried out by the members of the family of the plaintiffs. *Held* that, whether or not they were entitled to exclude others from interfering with the repairs of the steps made by their ancestors, the plaintiffs were not entitled to an injunction prohibiting others from interfering with the general conservancy of the tank. *MUTTAI v. SIVARAMAN* [I. L. R., 8 Mad., 229]

30. ——— Light and air.—Ancient lights.—Principles on which the Court grants injunctions and assesses damages in the case of obstruction of ancient lights. Effect of alteration of windows on plaintiff's right. *LACKERSTEEN v. TARBURNKATH PORAMANICK*. Cor., 91

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(A) OBSTRUCTION TO RIGHTS OF PROPERTY—continued.****Light and air—continued.**

31. ——— *Erection of buildings.*—Obstruction to light and air.—An injunction restraining the erection of buildings in Calcutta refused, a wall of 17 feet high at a distance of 20 feet not being such an obstruction as to call for the interference of the Court. Motion refused without prejudice to action for damages. **BARROW v. ARCHER** [Cor., 9

32. ——— *Obstruction to light and air.*—Door, Light admitted by.—When the Court is asked to interfere by injunction to restrain the obstruction of light and air to a dominant tenement, the question to be determined is, Is the obstruction such as seriously to interfere with the comfort or enjoyment of the owners of the dominant tenement, or such as to cause a material injury to it—an injury which cannot be completely compensated by damages? English cases on the subject reviewed. The Court will in such cases interfere, as well by mandatory as by preventive injunction, provided that in the circumstances of the case there is nothing inequitable in putting in force the former remedy. The Court will look not merely to the use to which rooms, in a dwelling-house from which light is obstructed, are actually put at the time of the obstruction, but also to the use to which they may be put for all reasonable purposes of occupation. It is immaterial whether light is admitted through a window or a door. In case of obstruction, the owner of the dominant tenement is in either case entitled to protection. **RATANJI HARMASJI v. EDALJI HARMASJI** [8 Bom., 181

33. ——— *Obstruction to light and air.*—Mandatory injunction.—Infringement of right by neighbouring owners of buildings.—Damages.—Where the plaintiff and the defendant, being owners respectively of two adjoining houses and the verandahs immediately in front of those houses, agreed that they should keep the verandahs open and not build upon them or divide them by a wall.—Held that the mere fact that the defendant, when re-building his house, built its new front wall in advance of the plaintiff's, thus encroaching on the defendant's own verandah in breach of the agreement, is not sufficient in itself to justify the Court in granting a mandatory injunction ordering its removal. It should also be satisfied that the new wall so materially interferes with the comfort and convenience of the plaintiff that the consequences of the breach of agreement cannot adequately be compensated by damages. It should also satisfy itself whether the plaintiff protested against the new wall being built whilst in course of erection, or quietly acquiesced in what the defendant was doing, and only objected when the wall was completed. In the latter case the Court should only award damages. **RANCHHOD JAMNADAS v. LALLU HARIBHAI. LALLU HARIBHAI v. RANCHHOD JAMNADAS** . 10 Bom., 95

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(A) OBSTRUCTION TO RIGHTS OF PROPERTY—continued.****Light and air—continued.**

34. ——— *Obstruction to light and air.*—Damages.—Injury not compensated for by damages.—Demolition of house.—Execution of decree.—Ancient lights.—Re-erection of his house by the defendant, notwithstanding notice from the plaintiff, so as to darken some of the principal rooms of the plaintiff's house, making them unfit for occupation during the day without artificial light, is an injury which cannot be adequately redressed by an award of damages, and against which the Court will grant relief by issuing a mandatory injunction directing the defendant to pull down so much of the house as is necessary to stop the injury. The probability of the defendant suffering a greater loss by the demolition of his house than the plaintiff, if his claim could be reduced to money, would suffer by being awarded a money compensation, is no ground for depriving the plaintiff of a mandatory injunction in his favour, except under special circumstances. To determine what demolition of the house is necessary, the Court executing the decree was directed to employ a professional man agreed on by the parties if they could agree, or nominated by the Court if they could not. **JAMNADAS SHANKARLAL v. ATMARAM HARJIVAN** . I. L. R., 2 Bom., 133

35. ——— *Obstruction to light and air.*—Substantial injury.—Damages.—Acquiescence.—Any act by which the control of light and air are taken out of the hands of the person entitled to them, or by which the access of light and air to the window of a dwelling-house is interfered with, is *prima facie* an injury of a serious character. Where the defendant, without leave or license, took possession of the plaintiff's window as completely as if he had blocked it up altogether.—Held that no precedent warranted the substitution of damages for an injunction in such a case against the plaintiff's will. **NANDKISHOR BALGOVAN v. BHAGUBAI PRANVALUBHIDAS** . I. L. R., 8 Bom., 95

36. ——— *Obstruction to light and air.*—Attachment for infringement of injunction.—Opinions of surveyors.—When an injunction has been granted restraining a person from interrupting the access of light and air to certain windows, and the Court considers that the injunction has been infringed, an attachment will issue, even though the defendant has proceeded according to the advice of his surveyor and legal adviser in constructing the building complained of as a breach of the injunction. The Court in such cases does not consider itself bound by the opinion of surveyors, but will form its own judgment as to the probable effect of the structure complained of. **PRANJIVANDAS HURJIVANDAS v. MAYARAM SALMAIDAS** . I Bom., 148

37. ——— *Water.*—Obstruction to right to flow of water.—Substantial injury.—In cases of obstruction of right to an uninterrupted flow of water, it must appear from the circumstances in evidence in

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(A) OBSTRUCTION TO RIGHTS OF PROPERTY—continued.****Water—continued.**

each case that the interference or obstruction complained of is not a trivial but a substantial injury in order to warrant relief by way of injunction.

POKUSAWMI TAYER v. COLLECTOR OF MADURA

[5 Mad., 6

KRISTNA AYYAN v. VENKATACHELLA MUDALI

[7 Mad., 60

where it was found that no right of the plaintiffs had been invaded, no damage had accrued, and no case of prospective damage had been made out, so that he was not entitled to an injunction.

38. ——— Obstruction to flow of water.—Erection of embankment.—Requisite evidence to justify grant of injunction.—In a suit for an injunction to compel defendant to reduce to its original dimensions an embankment which he had recently raised from a certain height to a greater height, on the ground that the effect of defendant's act had been, and would be, to injure plaintiff's land by preventing the passage of water which used to overflow that land,—*Held* that plaintiff was bound to establish not merely an injury, actual or prospective, caused by the act complained of, but an injury caused by infraction of some right which plaintiff possessed, or by the omission of something which defendant was legally bound to do. **FRAN KRISTO ROY v. HORO CHUNDER ROY . . . 10 W. R., 435**

39. ——— Right of way.—Ownership of soil.—Suit for trespass, injunction, and to close doors.—G., the owner of certain property, sold it in lots to different persons. The plaintiffs purchased a portion of the property, and obtained from G. a conveyance, in which the southern boundary of the land purchased by them was stated to be "the land of the said G. out of which he has allowed a passage six feet broad running almost straight west and east, and terminating on another passage leading," &c.; the deed continued, "which two passages the said G. hath granted and allowed, and doth hereby grant and allow to" the plaintiffs, "their heirs, representatives, and assigns, and all other the purchasers of the northern portion of the said piece of land, &c., together also with the right of the two passages for ingress and egress hereinbefore mentioned." In a second deed conveying another parcel of land to the plaintiffs, G. said, with reference to the latter passage, "No one shall be able to throw sweepings or filth on the said road, or make it unclean; if any one does at any time act thus, you will deal with him according to the laws in force." The defendant had become possessed of part of the northern portion of the land sold by G., and he also owned, under a distinct title, a house abutting on the lane in dispute, but having no doors opening into it. Shortly before the institution of the present suit, the defendant constructed three doors opening on to the lane, two of which were used for the purpose of cleaning two privies on the defendant's premises, and the third was

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(A) OBSTRUCTION TO RIGHTS OF PROPERTY—continued.****Right of way—continued.**

used by the defendant and his servants as a means of access to the lane. In a suit by the plaintiffs seeking damages for trespass, and an injunction against the alleged wrongful user of the lane by the defendant, and praying that he might be ordered to close the three doors,—*Held* (per COUCH, C. J., and MARKBY, J., overruling the decision of MACPHERSON, J.) that the plaintiffs had not such a property in the soil of the lane as would entitle them to prevent the defendant from making new doors on to the lane, and to restrain him from using the doors already made; they had only a right of way: but an injunction was granted restraining the defendant from using his door-ways for the purpose of cleaning his privies or in any other manner so as to obstruct the free use by the plaintiffs of the lane. **MADANMAHAN SEN v. CHANDRAKUMAR MOOKERJEE**

[9 B. L. R., 328; 18 W. R., 379

40. ——— Obstruction to right of way.—Special damage.—Injunction and not compensation granted.—The defendants closed a gateway leading across a level crossing of their railway over which there was a public right of way. The plaintiff alleged that by the closing of this gateway access to his bungalow during the monsoon was completely stopped; and he sued to have the gateway reopened. The lower Appellate Court found that there was a public right of way over the level crossing; that it had been obstructed by the defendants; and that the plaintiff had suffered special damage by the obstruction. On special appeal to the High Court it was contended by the defendants that the plaintiff was only entitled to compensation, and not to an injunction. *Held* that the inconvenience caused to the plaintiff was real and substantial; that the plaintiff was entitled to the user of the right of way in question, and under the circumstances to an injunction against its obstruction. **G. I. P. RAILWAY COMPANY v. NOWROJI PESTANJI . I. L. R., 10 Bom., 390**

(V) PUBLIC OFFICERS WITH STATUTORY POWERS.

41. ——— Acts of trespass committed by public functionaries.—Municipal Act, Bombay Act II of 1865, ss. 131, 160.—Principles upon which the Court will interfere by injunction to restrain acts of public functionaries in excess of their statutory powers considered. If the Municipal Commissioner of Bombay is desirous of putting in force the provisions of section 131 of the Municipal Act (Bombay Act II of 1865) and compelling a householder (whose house has been taken down) to set the foundations back to the general level of the street, he must exercise his powers when, or within fourteen days after, the householder gives notice, under section 160 of the Act, of his intention to re-build. Where a trespass of a continuing nature has been committed by the defendant, but has been discontinued before suit brought, the Court will not interfere by injunction to restrain the defendant from continuing such

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(i) PUBLIC OFFICERS WITH STATUTORY POWERS—continued.****Acts of trespass committed by public functionaries—continued.**

trespass merely because the plaintiff entertains vague apprehensions that the trespass may be recommenced. **CHABILDAS LALLUBHAI v. MUNICIPAL COMMISSIONERS OF BOMBAY** . . . 8 Bom., O. C., 85

42. ——— Act of corporate body.—Injunction to restrain libel.—Trustees of Port of Bombay.—Bombay Act I of 1878.—Resolutions of Corporation.—The Court will not grant an injunction to restrain the publication of a libel; nor to restrain, at the suit of an individual, an act of a corporate body, on the ground of such act being *ultra vires*, except where such individual has been damaged by such act in his rights of ownership, commodity, or easement. There is no authority for the proposition that an individual is entitled to protection by way of injunction against the act of a corporation, though in excess of their powers, which affects that individual's character and reputation, whether private, professional, or commercial, which he would not have been entitled to had the act complained of been committed by an individual defendant, on the ground that the act in question was one which the corporation had no power to do under their instrument of incorporation. The Trustees of the Port of Bombay have the power to record their decisions and opinions with regard to matters connected with the business they have under their Act power to transact; whether such decisions or opinions are confined to statements of what they believe to be actual facts, or extend also to the giving of advice for the conduct of their successors in office with regard to such business, and whether the expression of such decisions, opinions, or advice may or may not contain statements injurious to the character or reputation of others. Where, therefore, the plaintiff sought for an injunction to restrain the Trustees of the Port of Bombay from publishing two resolutions alleged to reflect injuriously on his character and reputation, on the ground that it was not within the powers conferred on the Trustees by Bombay Act I of 1878 to discuss or pass resolutions affecting his character, and that the publication of such resolutions was calculated to injuriously affect him in his commercial relations with the Government,—*Held* that the injunction could not be granted. *Held*, also, that though the Court, under certain circumstances, might have the power of so framing an order for injunction as to produce the effect of cancelling the minutes of a resolution recorded in the books of a corporate body, yet that it could not order the Trustees of such body to pass and record a resolution dictated by the Court. **SHEPHERD v. TRUSTEES OF THE PORT OF BOMBAY** . I. L. R., 1 Bom., 132

43. ——— Right of municipal officers to levy taxes.—Quare.—Whether the Court ought to interfere by way of injunction with the exercise of a right, or alleged right, of officers of a municipal body to levy taxes and dues. **HOEMASJI KARSTIJI v. PEDDER** . . . 12 Bom., 199

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(i) PUBLIC OFFICERS WITH STATUTORY POWERS—continued.**

44. ——— Powers of public body to collect tax.—Water-rate.—Injunction to restrain collection.—Where a public body has received by statute a discretionary power to levy and is laid under an obligation to collect a rate, an injunction cannot be granted by a Court so as to deprive such public body of the power of exercising its discretion or to prohibit it from discharging the obligation. **MUNICIPAL COMMISSIONERS, MADRAS, v. BRANSON** [I. L. R., 3 Mad., 201

45. ——— Suit by agents of company to restrain it from carrying into effect a resolution of directors.—Power to appoint solicitors to company.—Practice.—By the Memorandum and Articles of Association of the New Dharamsey Poonjabhoy Spinning and Weaving Company, the plaintiffs' firm of *M. F. & Co.* were appointed agents of the company for twenty-five years, and it was provided that they should have the general control and management of the company. Clause 98 of the Articles provided that the said firm, as such agents, should have full power and authority (*inter alia*) to appoint and employ, in or for the purposes of the transaction and management of the affairs and business of the company, such solicitors as they should think proper. An agreement, dated 26th August 1874, was also entered into between the company and the partners in the firm of *M. F. & Co.*, the executors, administrators and assigns, for the time being constituting the partnership firm of *M. F. & Co.*, whereby it was agreed that the said firm should be agents to the company for twenty-five years to buy and sell, &c., and particularly to exercise all the powers contained in clause 98 of the Articles of Association. Messrs. *C. & B.* were duly appointed solicitors to the company, and acted as such for a considerable time. Merwanji Framji, one of the members of the said firm of *M. F. & Co.*, died in the middle of March 1876. The plaintiffs complained that *G.*, one of the shareholders in the company, became desirous of ousting the plaintiffs from the position of agents of the company, and of becoming the managing director of the company; that in July 1881 he procured his own election and that of certain nominees of his as directors of the company; and on the 8th August 1881 procured the passing of a resolution at a Board meeting to the effect that as Messrs. *C. & B.*, the company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the company, that a change should be made, and that Messrs. *H., C., & L.* be appointed solicitors of the company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of *G.* of ousting the plaintiffs from their agency, and getting the management of the company for himself; that Messrs. *H., C., & L.* had been for a long time the solicitors of *G.*, and had been advising him in his designs upon the company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the company and the plaintiffs and a violation of the Articles of Association of the company. The plaintiffs

INJUNCTION—continued.**2. SPECIAL CASES—continued.****(c) PUBLIC OFFICERS WITH STATUTORY POWERS—continued.**

Suit by agents of company to restrain it from carrying into effect a resolution of directors—continued.

sued G. and two other directors of the company, and the company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874, and in particular from carrying into effect the resolution appointing Messrs. H., C., & L. as solicitors for the company, and to restrain them from doing anything inconsistent with the Memorandum and Articles of Association. The defendants contended that the contract of the 26th August 1874 had been determined by the death of Merwanji Framji, and that the powers conferred on the agents by clause 98 of the Articles were, subject to the general powers of management, vested in the directors by the Articles, and that the case was not one in which an injunction could be granted. It being admitted that the conduct of the defendants would be supported by the company in general meeting owing to their having a preponderance of votes, *Held* that, inasmuch as the Court would not, by a decree for specific performance or by injunction, compel the company to retain the plaintiffs in the confidential position of agents, it would not restrain the defendants or the company from appointing a solicitor, which was only a violation of what was ancillary or incidental to the principal part of the contract, *viz.*, the agreement that the plaintiffs should be the agents of the company for twenty-five years; and further, *seemle* that on the merits of the case the Court would not interfere on behalf of the plaintiffs. **NUSSERWANJI v. GORDON**

[I. L. R., 6 Bom., 266]

(j) TRADE MARK.

46. ——— Restraining use of trade mark.—Injunction granted to restrain a bazar dealer from using trade marks similar to those of a Glasgow firm trading in India. **EWING v. CHOONER LALL MULLICK**

[Cor., 150]

47. ——— Fraudulent intention.—In an application for an injunction to restrain the use of a trade mark, it is not a sufficient defence to say there was no fraudulent intention, and that is no reason for not granting the application. **GRAHAM v. KEE, DODS & Co.**

[3 B. L. R., Ap., 4]

3. DISOBEDIENCE OF ORDER FOR INJUNCTION.

48. ——— Remedy for disobedience of order.—*Contempt of Court.*—The proper remedy for disobedience of an order of injunction passed by a Civil Court is committal for contempt. **IN THE MATTER OF THE PETITION OF CHANDRAKANTA DE**

[I. L. R., 6 Calc., 445; 7 C. L. R., 350]

INJURY.

——— **Anticipation of—**

[I. L. R., All., 622]

INJURY—continued.

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[6 B. L. R., 154
2 N. W., 182]

See INJUNCTION—UNDER CIVIL PROCEDURE CODE

14 B. L. R., 352

——— **Not compensated for by damages.**

See INJUNCTION—OBSTRUCTION TO RIGHTS OF PROPERTY

I. L. R., 2 Bom., 133

——— **To neighbouring land by use of water.**

See DAMAGES—SUITS FOR DAMAGES—TORTS.

[2 B. L. R., Ap., 58
2 W. R., 43
W. R., 1864, 103
1 N. W., 24
15 W. R., 250
3 Mad., 111
Marsh., 85; 1 Hay, 152]

INNKEEPER AND GUEST.

——— **Lodging or boarding-house keeper and lodger.**—*Liability for goods lost.*—

This suit was brought to recover the value of certain articles stolen from the plaintiff's rooms at an hotel in Bombay. The defendant was the licensed proprietor of the hotel, who was in the habit of entertaining, for shorter or longer periods, all comers willing to pay the usual charges, and the plaintiff was an exchange broker, doing business in Bombay, who had lived at the hotel for more than a year, paying for his board and lodging at first by the day, and afterwards by agreement at the rate of so much a month, but neither was the plaintiff under any obligation to remain, nor the defendant to accommodate him for any fixed time. *Held* that the relation of innkeeper and guest (and not that of boarding-house keeper and lodger) subsisted between the parties; and that the defendant was *prima facie*, and without proof of actual negligence, liable to make good the loss sustained by the plaintiff. There is no law but the Common Law of England to regulate the relation of innkeeper and guest in Bombay, in a case between a European and Parsee. **WHATELEY v. PALANJI PESTANJJI**

[3 Bom., O. C., 187]

INQUIRY INTO CAUSE OF DEATH.

See CRIMINAL PROCEDURE CODE, 1882, s. 176 (1872, s. 185) I. L. R., 3 Calc., 742

INSANITY.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES

19 W. R., Cr., 26

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

See CASES UNDER LUNATIC.

See MAHOMEDAN LAW—INHERITANCE.

[2 B. L. R., A. C., 306]

INSANITY—continued.

1. — Death caused by insane person.—Unsoundness of mind as absolving a man from the consequences of death caused by him observed upon. *QUEEN v. NOBIN CHUNDER BANERJEE*
[13 B. L. R., Ap., 20: 20 W. R., Cr., 70]

2. — Unsoundness of mind, Test of.—*Knowledge of wrong-doing.*—The test to determine whether a person who has committed an act which is charged against him as an offence, was of sound mind at the time of its commission, is whether he knew that he was doing wrong. *QUEEN v. JOGO MOHUN MALA* . . . 24 W. R., Cr., 5

3. — *Penal Code, s. 84.*
—*Plea of insanity in criminal cases.*—*Legal test of responsibility in cases of alleged unsoundness of mind.*—Section 84 of the Penal Code (Act XLV of 1860) lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, as distinguished from the medical test, that the criminality of an act is to be determined. The accused killed his two young children with a hatchet. The reason given for the crime was that, while he was laid up with fever, the crying of the children annoyed him. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. Held that, as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, guilty of murder. *QUEEN-EMPERESS v. LAKSHMAN DAGDU* . . . I. L. R., 10 Bom., 512

4. — Question of sanity of prisoner on criminal trial.—*Procedure.*—If the Court entertains doubt as to the sanity of a prisoner, the fact of such insanity should be put in issue and tried. *REG. v. HIRA PUNJA* . . . 1 Bom., 33

5. — *Criminal Procedure Code, 1861, ss. 389, 390, 394.*—A prisoner who is insane and unaccountable for his actions, and therefore incapable of making his defence, instead of being tried, should be dealt with according to sections 389 and 390, Code of Criminal Procedure. *QUEEN v. KALAI* . . . 3 W. R., Cr., 57

QUEEN v. SAHA MAHOMED . . . 3 W. R., Cr., 70

QUEEN v. NOORKHAN CHOWDERY

[1 W. R., Cr., 11]

QUEEN v. MUSTAFA . . . 1 W. R., Cr., 15

Now under ss. 464—475 of the Criminal Procedure Code of 1882.

6. — *Criminal Procedure Code, 1861, ss. 391, 392.*—*Examination of medical officer.*—*Proof of insanity.*—A Magistrate rightly commits for trial at the Sessions a prisoner charged with murder, whom he finds to be sane at the time of the preliminary investigation, although he was insane when he committed the act. When a prisoner is found to be insane at the time of his trial, the proper procedure applicable to his case is that prescribed by sections 391 and 392 of the Code of Criminal Procedure. A mere written certificate of a medical officer that a prisoner is of unsound mind,

INSANITY.—Question of sanity of prisoner on criminal trial—continued.

and incapable of making his defence, is not sufficient evidence of the prisoner's insanity. The medical officer should be called as a witness, and be personally and carefully examined. *QUEEN v. RAM RUTTON DOSS* . . . 9 W. R., Cr., 23

7. — *Criminal Procedure Code, 1872, ss. 425, 232.*—*Trial of fact of unsoundness of mind.*—Where, on the trial of a prisoner by a Sessions Judge, the Judge, entertaining some doubt as to the prisoner's sanity, took the evidence of the Civil Surgeon, and himself decided that the prisoner was of sound mind and capable of making his defence, whereupon the trial proceeded, and the prisoner was convicted,—Held that the conviction must be set aside, and a new trial directed reading sections 232 and 425 of the Criminal Procedure Code together. The preliminary issue of soundness of mind or otherwise ought to have been tried by the jury and not by the Judge personally. *QUEEN v. BHEEKOO KALWAR*
[10 B. L. R., Ap., 10: 19 W. R., Cr., 15]

8. — *Acquittal.*—*Procedure.*—Where a prisoner was declared by the Civil Surgeon to be insane at the time he was called on to make his defence, it was held that it was irregular to acquit him; proceedings should have been stayed, and the prisoner detained, pending the orders of Government. *IN THE MATTER OF ROMON AUDHEE-KARSH* . . . 10 W. R., Cr., 37

9. — *Criminal Procedure Code, 1861, s. 393.*—Case in which the prisoner, notwithstanding that he had been convicted by the Sessions Judge, was acquitted by the High Court on the ground of insanity, under section 393 of the Code of Criminal Procedure, and directed to be kept in safe custody, pending the orders of the Local Government to be applied for by the Judge. *QUEEN v. PURSORAM DOSS* . . . 7 W. R., Cr., 42

10. — *Imbecile.*—*Inability to understand proceedings.*—*The Code of Criminal Procedure (X of 1872), ss. 186 and 423.*—The provisions of section 186 of the Code of Criminal Procedure do not apply to a person who is of unsound mind; they apply to persons who are unable to understand the proceedings from deafness, or dumbness, or ignorance of the language of the country, or other similar cause. But where the inability to understand the proceedings is due to unsoundness of mind, the procedure provided in Chapter XXXI of the Code must be followed. Where a Magistrate found that an accused person convicted of theft was an imbecile, and consequently unable to understand the proceedings, but that he was not of unsound mind, the High Court held that this distinction was without a difference, and, under section 297 of the Code, annulled the conviction, and declaring the accused to be of unsound mind, directed that he should be released on sufficient security being given that he would be properly taken care of, and prevented from doing injury to himself or any other person, and for his appearance when required; and that, in default of such security being given, the case should be reported to Government. *EMPERESS v. HUSEN*

[I. L. R., 5 Bom., 262]

INSANITY—continued.

11. ——— Jurisdiction of Criminal Courts.—*Criminal Procedure Code (X of 1872), ss. 426, 432.*—The authority of the Criminal Courts over an accused, declared under section 426 of the Criminal Procedure Code to be of unsound mind, ceases after the transmission of such accused to the place of safe custody appointed by the Local Government, and such authority can only be revived under the circumstances mentioned in section 432. *EM-PRESS v. JOY HARI KOE*. 1 L. R., 2 Cal., 356

INSOLVENCY.

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See DEBTOR AND CREDITOR.

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1. CASES UNDER ACT XXVIII OF 1865.

1. ——— Order for winding-up estate.
—*Effect of an execution proceeding.*—Leave to proceed.—*Laches.*—*Right of assignees and creditors.*—An order made under Act XXVIII of 1865 for the winding-up of the estate of a trader not only stayed the further prosecution of suits, &c., against him, but also prevented the completion of an execution against his immoveable or ordinary moveable property, if such execution had not been consummated by seizure and sale before the filing in Court of the resolution passed at the meeting of the creditors, unless the leave of the Court be given to the execution-creditor to proceed notwithstanding the winding-up order. Such leave was not to be given except upon special grounds. *Laches* of the execution-creditor was an obstacle to his obtaining such leave. Under the Insolvent Debtors Act (1 and 2 Vic., chapter 110, English Repealed Act; 11 and 12 Vic., chapter 21, India), the mere delivery of the writ of *fi. fa.* to the Sheriff or his deputy for execution bound the goods as against the assignees in insolvency, subject to the right of the execution-creditor to have satisfaction of his debt by sale. But in bankruptcy the law is otherwise. The execution must be levied by seizure and sale before the date of the fiat or the filing of the petition for adjudication; otherwise the execution-creditor is entitled only to a rateable part of his debt

INSOLVENCY—continued.**1. CASES UNDER ACT XXVIII OF 1865—continued.****Order for winding-up estate—continued.**

with the other creditors. *FINANCIAL ASSOCIATION OF INDIA AND CHINA v. PRANJIVANDAS HARBIVANDAS*. 3 Bom., O. C., 25

2. ——— Claims proveable under Act XXVIII of 1865.—*Claim against directors of joint-stock company.*—A claim against the directors of a joint-stock company to make good funds of the company expended by them, on behalf of the company, in transactions that the company was forbidden by its articles of association to engage in, was proveable under Act XXVIII of 1865. *LIQUIDATORS OF THE INDIAN PENINSULAR, LONDON AND CHINA BANK v. SCOTT*. 5 Bom., O. C., 167

3. ——— Liability of trader for calls on shares.—*Act XXVIII of 1865, s. 24.*—*Winding-up order.*—*Discharge.*—An insolvent trader, who has obtained his discharge under section 24 of Act XXVIII of 1865, is not liable for calls made, after he has obtained his discharge, in respect of shares held by him in a joint-stock company, when the order for the winding-up of such company has been made prior to the time of the insolvent trader obtaining his discharge. *IN RE MERCANTILE CREDIT AND FINANCIAL ASSOCIATION. PUNNETT v. VINAYAK PANDURANG*. [9 Bom., 27

2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

4. ——— Mortgage by insolvent.—*Priority.*—*Rights of mortgagee.*—*Official Assignee.*—A mortgage executed by an insolvent (who has not obtained a certificate and discharge) is subject to the lien of the mortgagee in priority to the claim of the Official Assignee under the insolvency. *KERAKOOSH v. BROOKS*. 4 W. R., P. C., 62
[8 Moore's I. A., 339

5. ——— Attachment by decree-holder.
—*Priority.*—*Vesting order.*—An attachment made by a decree-holder prior to a vesting order in favour of the Official Assignee, must have preference to the claim of the Official Assignee. *SHEW NARAIN SINGH v. MILLER*. 17 W. R., 234

6. ——— Attachment before judgment.
—*Adjudication of insolvency subsequent to decree.*—*P.* having attached *E. M.'s* property, and obtained a decree against him, subsequently had him adjudicated an insolvent. The Court ruled that the attachment was unaffected by the adjudication. *IN RE RAMCOMMY MITTER*. Bourke, O. C., 149

7. ——— Subsequent insolvency.—*Priority of Official Assignee.*—Where an attachment previous to decree had been obtained against the property of the defendants, it was held that attachment did not give to the plaintiff any licence in respect of the property attached as against the assignee of the defendants, notwithstanding their insolvency having occurred after the plaintiff had ob-

INSOLVENCY—continued.**2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—continued.****Attachment before judgment—continued.**

tained his order attaching the property. **PETUMBER MUNDLE v. COCHRANE**

[1 Ind. Jur., N. S., 11: Bourke, O. C., 339]

8. ——— Vesting order. Effect of, on attached property.—An attachment of property before judgment places it in the custody of the law, but does not alter the property in it. An order, therefore, vesting the property of an insolvent in the Official Assignee, vests in that officer property of the insolvent which has been so attached. **IN THE MATTER OF GOOOOL DASS SOONDERJEE. PETUMBER MUNDLE v. GOOOOL DASS SOONDERJEE**

[1 Ind. Jur., N. S., 327: Bourke, O. C., 240]

9. ——— Effect of vesting order.—Priority.—Certain property was attached before decree under Act VIII of 1859, section 83. On the 11th of May the plaintiff obtained a decree in the suit against the person whose property had been attached. On the same day the judgment-debtor filed his petition in insolvency, and the usual vesting order was made. *Held* in the Court below that the Official Assignee was entitled to the goods, notwithstanding the attachment before decree followed by the decree. *Held*, on appeal, property attached before decree passes to the Official Assignee under an insolvency where the adjudication and vesting order are obtained after decree, and where the attaching creditor has not proceeded to sell. *Semble*,—The Official Assignee has priority over the execution-creditor, unless the latter has actually sold under the attachment, and received the proceeds from the officer of the Court. **RAM-FERSAUD ROY v. CALLACHAND DASS**

[1 Ind. Jur., N. S., 325, and on appeal, *Id.*, 373]

10. ——— Vesting order.—Priority of Official Assignee.—The title of the Official Assignee of an insolvent under 11 and 12 Vict., chapter 21 (the Insolvent Act) is preferable to that of a creditor of the insolvent who before the vesting order has obtained an order for attachment before judgment under sections 83 and 84 of the Civil Procedure Code, 1859, in respect of the property comprised in such attachment. The effect of attachment before judgment is to secure that the property attached shall be forthcoming at the time of pronouncing the decree, to abide whatever order the Court shall make upon it. A vesting order in insolvency is in effect an assignment in trust for the benefit of creditors, and is paramount to the right of an attachment before the judgment-creditor, as it is more equitable that property under the control of the Court should be applied for the benefit of all the creditors than for the exclusive advantage of one. **JAYA RAMJI v. JADAVJI NATHU**

[1 Bom., 224]

JAYA RAMJI v. JADAVJI NATHU. EX PARTE GAMBLE

[2 Bom., 150: 2nd Ed., 142]

11. ——— Priority of Official Assignee.—Where moveable property of defendants in certain suits in Civil Courts in the mofussil had

INSOLVENCY—continued.**2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—continued.****Attachment before judgment—continued.**

been attached before judgment under sections 83 and 84 of Act VIII of 1859, and so continued until decrees and orders for execution had been made in those suits, and warrants for such execution had been lodged with the Nazir of the Court,—*Held* that those warrants at the latest, on their delivery to the Nazir, bound the property without re-seizure by him; and that accordingly the execution-creditors were entitled to preference as regarded the attached goods over the Official Assignee, in whom the estate of the defendants had become vested by the orders of the Insolvent Debtors' Court at Bombay, made before sale by the Nazir of the attached property, but subsequently to the delivery to him of the warrants for execution. *Held*, however, also, that mere attachment before judgment does not so bind the property attached as to give to the attaching creditors priority over the Official Assignee, in whom the estates of the defendants had been vested by orders of the Insolvent Debtors' Court made subsequently to such attachment, but before decree and warrant for execution. *Doe d. O'Hanlon v. Paliologus, Mort.*, 323, observed upon. **GAMBLE v. BHOLAGIE** . 2 Bom., 150: 2nd Ed., 147

12. ——— Priority of Official Assignee.—Civil Procedure Code, s. 81.—Insolvent Act (11 & 12 Vic., c. 21), ss. 7 and 49.—The plaintiffs brought a suit against *P. & Co.* for the recovery of a sum of money with interest, and on 15th May obtained a prohibitory order for attachment before judgment under section 81 of Act VIII of 1859, under which they attached, on the 17th of May, the right, title, and interest of *P. & Co.* in the premises in which they carried on business in Calcutta. On the 20th of May, *P. & Co.* were adjudicated insolvents on the petition of other creditors, and the usual order was made vesting their estate and effects in the Official Assignee. On an application on behalf of the Official Assignee for an order releasing the property from attachment, the Court ordered the prohibitory order to be set aside, and the property attached thereunder to be released. **BANK OF BENGAL v. NEWTON** . 12 B. L. R., Ap., 1

13. ——— Vesting order.—Priority of Official Assignee.—An attachment before judgment has no effect against the Official Assignee, who holds the property of the judgment-debtors under a vesting order of Court made before the order for attachment was passed. **MILLER v. MON MOHUN ROY** [I. L. R., 7 Calc., 213: 8 C. L. R., 213]

14. ——— Vesting order.—Civil Procedure Code, s. 376.—Official Assignee's title.—Where a vesting order has been made under 11 and 12 Vic., c. 21, section 7, after attachment and before decree, the title of the Official Assignee takes effect and prevents the attaching creditor from obtaining satisfaction of his decree by a sale. *Shib Kristo Shaka Chowdhry v. Miller*, I. L. R., 10 Calc., 150; and *Gamble v. Bhologir*, 2 Bom., 150, followed. **SADAYAPPA v. PONNAMA** . I. L. R., 8 Mad., 554

INSOLVENCY—continued.**2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—continued.****Attachment before judgment—continued.**

15. — Vesting order.—
Priority of claim of Official Assignee.—A creditor attached before judgment certain of his debtor's property. Between the date of attachment and the date of the decree subsequently obtained by the creditor, the property of the debtor became vested in the Official Assignee under a vesting order. The Official Assignee brought a suit to remove the attachment, and for an injunction restraining the sale of the property. The Court of first instance decreed the suit in favour of the Official Assignee. On the case coming up before a Full Bench, —*Held, per McDONNELL, TOTTENHAM, and PRINSEP, JJ.*, that, where there has been an attachment prior to decree, and the property of a judgment-debtor subsequently becomes vested in the Official Assignee in insolvency previous to the decree, the vesting order will prevent such an attaching creditor from executing his decree against the property. *Per GARTH, C.J., and MITTER, J., contra*, that, under the 84th chapter of Act XIV of 1882, the Court had no power to remove the attachment before judgment, or stay the sale at the instance of the Official Assignee. **SHIB KRISTO SHAHA CHOWDHRY v. MILLER**
 [1 L. R., 10 Cal., 150; 13 C. L. R., 433]

16. — Attachment under decree.—
Priority of Official Assignee.—Where money due to the judgment-debtor was attached in the hands of the Administrator General in execution of a decree, and afterwards, before any further steps were taken by the attaching creditor, the judgment-debtor filed his schedule in the Court for the Relief of Insolvent Debtors, and the usual vesting order was made, —*Held* that the Official Assignee had priority over the attaching creditor under Act VIII of 1859. **ROY CHUNDER ROY v. BAMPTON**
 [2 Ind. Jur., N. S., 188]

17. — Priority of Official Assignee.—Execution-creditor under decrees of Small Cause Court.—On the 22nd July *A.* brought an action in the Calcutta Court of Small Causes against the members of the firm of *B. & Co.* and obtained judgment on the same day. On the 28th July property belonging to *B. & Co.* was seized by a bailiff of the Court in execution of the decree. On the 26th July the members of the firm of *B. & Co.* were adjudicated insolvents, and the usual vesting order was made. On the 30th July the Official Assignee gave notice to the seizing bailiff of his claim to the property seized. *Held (per NORMAN, J., on a reference from the Small Cause Court)* that the Official Assignee was entitled to the property in priority to *A.* **COCHRANE v. GLADSTONE, WYLLIE & Co.**
 [2 Ind. Jur., N. S., 337]

18. — Priority of Official Assignee as against execution-creditor.—The Official Assignee of the Insolvent Court is entitled, under the vesting order to possession of the insolvent's estate, even when that estate has been attached in execution

INSOLVENCY—continued.**2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—continued.****Attachment under decree—continued.**

of a decree, and an order directing the sale of it has been passed. But if a sale has taken place before the vesting order, the property in the subject of the attachment has passed from the judgment-debtor to the auction-purchaser, and the proceeds of the sale are primarily charged with the satisfaction of the decree or decrees in execution of which the sale has been made. **SARKIES v. BUNDHOOD BAHU**
 [1 N. W., Part 6, p. 81; Ed., 1873, 172]

19. — Official Assignee.
Priority.—*A.* obtained a decree against *B.*, and in execution attached property of *B.* in Zillah Dinagore in January 1868, which was sold on the 19th of March. In the meantime *B.* had been adjudicated an insolvent, and the usual vesting order was made on March 6th. Notice of this order reached the Judge of Dinagore after the sale, but before the sale had been confirmed and the proceeds handed over. *Held* that the Official Assignee was entitled to the proceeds of the sale. **INDRA CHANDRA DOGAR v. TARACHAND DOGAR**
 [2 B. L. R., A. C., 61; 10 W. R., 358]

INDRA CHANDRA DOGAR v. OFFICIAL ASSIGNEE
 [11 W. R., 100]

20. — Execution-creditor.—Official Assignee.—The property of *A.* was attached under a decree obtained by *B.* After the attachment, but prior to the sale, *A.* was adjudicated an insolvent, and the usual vesting order was made. On the following day the agents of the Sheriff, by the order of the Official Assignee, sold the property attached for the recovery of the amount of *B.*'s decree, &c., and the proceeds of the sale were handed over by them to the Official Assignee. Subsequently the petition of the insolvent was dismissed. Immediately thereupon, on the same day, *C.*, another execution-creditor, attached the proceeds of sale in the hands of the Official Assignee. *B.* applied to the Court to order the Official Assignee to hand over the proceeds to the credit of his cause. On the same day *A.* filed a fresh petition in the Court for the Relief of Insolvent Debtors, and a second vesting order was made. *C.* claimed that the proceeds of sale should be handed over to him. *Held* that *B.* was entitled to have the proceeds paid to him. **WINTER v. GARTNER**
 [1 B. L. R., O. C., 79]

21. — Priority of Official Assignee.—Vesting order.—Attachment of money in execution of decree.—In execution of a decree of the Small Cause Court, certain goods belonging to the judgment-debtor, together with a sum of Rs227 in cash, were seized on the 22nd November; and on the 30th, the Rs227, together with the proceeds of sale of some of the goods, were placed to the credit of the decree-holder in the books of the Court. On the 25th November, the judgment-debtor was declared an insolvent, and by a vesting order of the same date his estate was transferred to the Official Assignee. *Held* that the execution was complete by the seizure of the

INSOLVENCY—continued.**2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—continued.****Attachment under decree—continued.**

money, and the Official Assignee was not entitled to the sum of Rs227 as against the execution-creditor. **GRISH CHANDRA ROY v. PRASANNA KUMAR CHINA** [4 B. L. R., O. C., 94

22. ——— Priority of Official Assignee.—Vesting order.—Sale in execution of decrees.—Auction-purchaser.—In September 1867, A. obtained a decree against B., and on 12th January 1868 caused a piece of land to be attached in execution. On 17th April 1868, it was sold by order of the Zillah Judge, and bought by C. Before this, however, the judgment-debtor, B., had filed his petition in the Insolvent Court, and on the 6th March 1868 a vesting order was made. On 24th July 1868, the Official Assignee sold the premises by the order of the Insolvent Court. The purchaser at the last-mentioned sale now sued to recover the property from the purchaser at the sale in execution of A.'s decree. *Held (per COUCH, C. J., BAYLEY, KEMP, and JACKSON, JJ.)*,—that the vesting order passed the property to the Official Assignee, subject to being divested by a sale in execution of the decree; that the sale in execution by order of the Zillah Judge was legal notwithstanding the vesting order; that the purchaser at the sale by order of the Insolvent Court had no right to recover it from him. The attaching creditor had a right to have the attached property sold, and the money realised by the sale paid to him. *Per PHEAR, J.*—The jurisdiction of the Zillah Judge to order the sale was not affected by the vesting order; but before making the order for sale the Official Assignee should be heard; and unless special reason be shown upon the Official Assignee's application, the execution proceedings should be stayed or set aside. In the present case it must be assumed that the Judge made the order for sale in due course, and consequently that sale operated to pass the property out of the hands of the Official Assignee into those of the auction-purchaser. **ANAND CHANDRA PAL v. PANCHILAL SURMA**

[5 B. L. R., 691: 14 W. R., F. R., 33

In the same case it was afterwards held by the Division Bench that the title of the purchaser at a sale by the Official Assignee at the instance and with the concurrence of certain persons who held a mortgage on the property, dated 30th September 1866, on which they had obtained a decree for sale, did not prevail over the title of the attaching creditor at the sale in execution of his decree. **ANAND CHANDRA PAL v. PUNCHER LAL SOOR** . . . 15 W. R., 257

23. ——— Execution creditor, Right of against Official Assignee.—Payment of proceeds of sale into Court.—A. obtained a decree against B. on 15th August 1870, and an order for execution thereof on 8th September. In pursuance of such order the Sheriff attached certain property belonging to B.; and by order of Court of 14th September the Sheriff was directed to sell the property so attached, and the sale was fixed for the 1st December. On 30th November B. filed his petition in the Insolvent Court,

INSOLVENCY—continued.**2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—continued.****Attachment under decree—continued.**

and the usual vesting order was made. On 1st December the property was sold by the Sheriff under the order of 14th September, and the proceeds were paid into Court. *Held* that the execution-creditor was entitled as against the Official Assignee to be paid out of the proceeds. **AGA MAHOMED ALI SHIRAZI v. JUDAH** . 7 B. L. R., 50: 17 W. R., 234, note

3. SALES FOR ARREARS OF RENT.

24. ——— Validity of sale against Official Assignee.—Insolvent Act, 11 & 12 Vic., c. 21.—Rights of purchaser.—When a tenant of land, owing arrears of tirvai (rent) takes the benefit of the Insolvent Debtors' Act, 11 and 12 Vic., c. 21, the Official Assignee must elect, and express his election, to take the land *cum onere*, otherwise he acquires no interest in it. Where such election has not been made, and a suit for possession is brought by a purchaser at an auction-sale held by the revenue authorities for the arrears, the insolvent cannot plead a *jus tertii* in the assignee. **CHINNA SUBBARAYA MUDALI v. KANDASAMI REDDI**

[I. L. R., 1 Mad., 59

25. ——— Right to sell in execution of decree.—Landlord and tenant.—Official Assignee.—Beng. Act VIII of 1869, ss. 59 and 60.—Insolvent Act, 11 and 12 Vic., c. 21.—A decree for arrears of rent of an under-tenure was obtained against a tenant who became an insolvent, and whose tenure became vested in the Official Assignee by virtue of the provisions of the Insolvent Act, 11 and 12 Vic., c. 21. An application was made under sections 59 and 60 of the Rent Law, Bengal Act VIII of 1869, for an order that the tenure should be sold for its own arrears. The Official Assignee objected to the sale, and contended that the decree-holder's only right was to prove in the insolvency for the amount of his debt. *Held* that, whether the arrears of rent became due before or after the insolvency of the judgment-debtor, the decree-holder was entitled to sell the tenure in execution of his decree. **CHUNDER NARAIN SINGH v. KISHEN CHAND GOLECHA** . . . I. L. R., 9 Calc., 855

4. RIGHT OF OFFICIAL ASSIGNEE IN SUITS.

26. ——— Suit on promissory note endorsed by an insolvent.—Right of Official Assignee to intervene.—Civil Procedure Code, s. 73.—In a suit brought on a promissory note, dated 15th February 1872, made by the defendant and payable to one L., and endorsed by L. to the plaintiff for value, it appeared in evidence on the hearing of the case as an undefended cause, that L. had been insolvent, and that the note had been delivered to him and endorsed by him to the plaintiff between the dates of his obtaining his personal and his final discharge, and the suit was ordered to stand over and notice to be given to the Official Assignee. On an

INSOLVENCY—continued.**4. RIGHT OF OFFICIAL ASSIGNEE IN SUITS—continued.**

Suit on promissory note endorsed by an insolvent—continued.

Application by the Official Assignee that the suit should be adjourned, and the Official Assignee be added as a party, the Court held that he had a right to intervene, and an order was made postponing the hearing of the suit for a month to enable the Official Assignee to institute a suit on the note. *KELLY v. HANLON* 10 B. L. R., Ap., 23

5. PROPERTY ACQUIRED AFTER VESTING ORDER.

27. ——— After-acquired property.—*Purchaser from insolvent who had not obtained his discharge.—Purchaser from Official Assignee.—Rights of parties.—Intervention of Official Assignee.—Adverse possession.*—Subject to the right and claim of the Official Assignee, and so long as he does not interfere, an insolvent, who has not obtained his final discharge, has power with respect to after-acquired property to buy and sell and give discharges, and do all other acts which he could have done before his insolvency. The possession of such property by an insolvent in such a position may be adverse to the Official Assignee so as to bar the title of the latter by lapse of time. *KRISTOOMUL MITTER v. SURESH CHUNDER DEB*

[L. L. R., 8 Calc., 556; 12 C. L. R., 253]

6. ORDER AND DISPOSITION.

28. ——— Order and disposition.—*Insolvent Act, ss. 23, 24.—Partners.—E.* carried on business in Calcutta in partnership with *B. & Co.*, under the style and firm of *B. & Co.* Goods were consigned on triplicate account to *B. & Co., B., & Co.*, and another. The consignors wrote to *B. & Co.*: "You will please hand over the goods, as per annexed list, to *B., B., & Co.*, Calcutta; they are bought, as you are aware, under special agreement on triplicate account." Before the goods had arrived, *B. & Co.* stopped payment. *B., B., & Co.* were creditors of *B. & Co.* After *B. & Co.* had stopped payment, on the application of *B., B., & Co.*, *E.* endorsed over, without consideration, the bills of lading to *B., B., & Co.*, who thereby obtained delivery of the goods, and proceeded to sell the same. Within two months of the endorsement *E.* filed his petition of insolvency. *Held* that, under section 24 of the Insolvent Act, it appearing on the evidence that at the time of the filing his petition the goods were, as to one third, the insolvent's property, the Official Assignee was entitled to have the goods, &c., handed over to him, and an account in respect of such of the goods as had already been sold. *IN THE MATTER OF ROBINSON* 2 Ind. Jur., N. S., 273

29. ——— Insolvent Act, s. 23.—An insolvent, *J. A.*, executed the following document in Calcutta, dated May 16th, 1867, in favour of *M., L., & Co.*: "Dear Sirs,—In consideration of your having advanced to me the sum of Rs. 700, I hereby

INSOLVENCY—continued.**6. ORDER AND DISPOSITION—continued.**

Order and disposition—continued.

assign to you the whole of the furniture and fittings now lying at my house, Fairy Hall, Dum-Dum, the whole of which I declare to be my property, free and unencumbered, and hereby authorise you to proceed to a sale of the said property by auction, should I fail to refund the amount of Rs. 700 on or before the 10th day of July next." The document was duly stamped and registered under section 53 of the Registration Act. *J. A.* failed to pay the Rs. 700; and on the following day, *M., L., & Co.* placed a durwan, their own servant, on the premises at Fairy Hall, to assert their right to the possession of the furniture, and to prevent its removal without their permission. An inventory was being made, and other steps taken preparatory to a sale. *J. A.* continued to reside in the house, and to use and enjoy the furniture as before, with the knowledge and consent of *M., L., & Co.* Before any sale took place, *J. A.* filed his petition in the Insolvent Court, and the usual vesting order was made. *Held* that the furniture was in the "possession, order, and disposition" of the insolvent within the meaning of section 23 of the Insolvent Act. *IN THE MATTER OF AGABEG*

[2 Ind. Jur., N. S., 340]

30. ——— Specific appropriation.—Insolvent Act (11 & 12 Vic., c. 21), ss. 23 & 24.—Jurisdiction.—Cause of action.—*St. & Co.*, merchants carrying on business at Glasgow, brought a suit against *J. C.*, Official Assignee, who resided in Calcutta, as assignee of the estate of *B. & Co.*, merchants, carrying on business at Calcutta, and *Sm. & Co.*, merchants, carrying on business at London. *St. & Co.* alleged in their plaint that they were the owners of certain goods, and sold the same to *B. & Co.* and *Sm. & Co.*, and drew for the price on *Sm. & Co.*, who accepted the drafts; that the goods were shipped to *B. & Co.* at Calcutta; that at the time when the acceptances were given it was agreed upon between *St. & Co.*, *Sm. & Co.*, and *B. & Co.*, that they should be met and paid out of the sale-proceeds of the goods, "which were thereupon specially appropriated thereto;" that *Sm. & Co.* and *B. & Co.* subsequently suspended payment,—namely, in December 1866 and January 1867; that in February 1867 *B. & Co.* filed their petition in the Court for the relief of Insolvent Debtors at Calcutta, having previously delivered a portion of the goods, and endorsed the bills of lading for the remainder to *J. S. & Co.*, who had notice of the insolvent state of *Sm. & Co.* and *B. & Co.*, without any consideration and without the consent or authority of *St. & Co.*, although the acceptances had not been met or returned, or the goods in any way paid for; that the proceeds arising from the sale of the goods had been handed over by *J. S. & Co.* to *J. C.*, who threatened and intended to apply the same in payment of the general body of creditors of *B. & Co.* *St. & Co.* prayed that the rights of the parties to the suit might be declared; that an account might be taken of what had been received by *J. C.* in respect of the proceeds of such sale; that *J. C.* might be directed to pay to *St. & Co.*, what on taking such ac-

INSOLVENCY—continued.**6. ORDER AND DISPOSITION—continued.****Order and disposition—continued.**

count might be found due to them; that a receiver might be appointed; that meanwhile *J. C.* might be restrained by injunction from paying over the same to any one except *St. & Co.* On the case coming on for settlement of issues, the suit was dismissed by *NORMAN, J.*, on the ground that, from the facts alleged in the plaint, the inference was that the goods were in the possession, order, and disposition of *B. & Co.*, as reputed owners, with the consent of *St. & Co.*, within the meaning of section 23 of the Insolvent Act; and therefore the goods and the sale-proceeds rightly passed to *J. C.* as assignee; and further that the Court had not jurisdiction to declare the rights of all parties as prayed for; that the cause of action did not wholly arise [within the jurisdiction, and it was not shown that leave had been granted to institute the suit. *Held*, on appeal that the Court had jurisdiction to entertain the suit, and the plaint sufficiently disclosed a cause of action. *St. & Co.* had a right to have it tried whether they had an equitable charge upon the proceeds for the purpose of paying the bills. *STERLING v. COCHRANE*

[1 B. L. R., O. C., 114]

31. ——— *Specific appropriation.—Insolvent Act (11 & 12 Vict., c. 21), ss. 23 & 24.—Jurisdiction.—Cause of action.—C. & Co.*, merchants, carrying on business in Manchester, brought a suit against *J. C.*, Official Assignee, who resided at Calcutta, as assignee of the estate of *B. & Co.*, merchants, carrying on business at Calcutta, and *S. & Co.*, and *M. & Co.*, and other merchants carrying on business in London and Glasgow respectively. *C. & Co.* alleged in their plaint that, under an arrangement with *B. & Co.* and *S. & Co.*, they shipped on the joint account of the three firms goods to *B. & Co.* at Calcutta, drawing for the price on *S. & Co.*, who accepted their drafts in respect thereof; that *C. & Co.* had a one-third share in the above joint accounts; *S. & Co.* had a one-third share, and *S. & Co.* and *M. & Co.* had a one-third share between them; that the whole of the goods were purchased and paid for by *C. & Co.*; that at the time the acceptances were given, it was distinctly agreed upon by all the parties that the bills should be met and paid out of the sale-proceeds of the goods, "which were thereupon specifically appropriated thereto;" that *S. & Co.* subsequently suspended payment in December 1866, and *B. & Co.* in January 1867; that in February 1867 *B. & Co.* filed their petition in the Court for the Relief of Insolvent Debtors at Calcutta, having previously sold a portion of the goods, and delivered the remainder to *J. S. & Co.*, as agents, for sale on account of *C. & Co.*, and the other parties interested, *J. S. & Co.* being instructed by *B. & Co.* to hold the same to a separate account of *B. & Co.*; that *J. S. & Co.* had received the proceeds of the sale of the whole of the goods; that the proceeds arising from the sale had been handed over by *J. S. & Co.* to *J. C.*, who threatened and intended to apply the same in payment of the general body of creditors of *B. & Co.* *C. & Co.* prayed that rights of the parties to the suit might be declared; that an ac-

INSOLVENCY—continued.**6. ORDER AND DISPOSITION—continued.****Order and disposition—continued.**

count might be taken of what had come into the hands of *J. C.* in respect of the goods; that *J. C.* might be declared answerable to *C. & Co.* for the amount which should be found to be due to them on such account; that *C. & Co.* might be declared entitled to the sum so found due for the price of the goods and other payments made by them on account of the goods; that *J. C.* might be directed to pay to *C. & Co.* what should be found to be due to them on taking an account; that the proceeds might be directed to be paid amongst the parties to the suit, according to their respective shares and interests therein; and that, in the meantime, *J. C.* might be restrained, by injunction, from paying over the same to any one except *C. & Co.* On the case coming on for settlement of issues, the suit was dismissed by *NORMAN, J.*, on the ground that the Court had not jurisdiction to declare the rights of parties as prayed, and no cause of action was disclosed against the Official Assignee. *Held*, on appeal, the Court had jurisdiction to entertain the suit, and the plaint sufficiently disclosed a cause of action. *C. & Co.* had a right to have the question tried whether, by the alleged arrangement, the proceeds of the goods were specifically appropriated to payment for the goods, and the Court had clearly jurisdiction to compel *J. C.*, the Official Assignee, to apply the proceeds, as far as they may have been specifically appropriated. *COLLIER v. COCHRANE* . . . 1 B. L. R., O. C., 131

32. ——— *Specific appropriation.—Insolvent Act (11 & 12 Vict., c. 21), ss. 23 & 24.*—In 1862 the plaintiff's former firm of *J. S. B. & B.*, of Manchester, entered into an agreement with *S. & Co.*, of London, and *B. & Co.*, of Calcutta, to purchase and ship, on the joint account of the three firms, certain goods to *B. & Co.*, each firm taking one-third share of the profit or loss in the transaction; and by the agreement it was stipulated as follows: "*J. S. B. & B.* to draw at six months on *S. & Co.* for cost of goods, including packing charges; said bills to be discounted (and domiciled) at *Overend, Gurney, & Co.*, at 1½ per cent. in excess of bank's minimum rate. *B. & Co.*, to remit their three months' or six months' drafts as may appear most desirable on *S. & Co.* in favour of *J. S. B. & B.*, which *Overend, Gurney, & Co.* agree to take at 1½ per cent. above bank minimum rate for three months and 1½ per cent. for six months as provision for said six months' drafts. *B. & Co.*, on sale of goods, to specially remit proceeds to *Overend, Gurney, & Co.* in first-class bills drawn in favour of *Overend, Gurney, & Co.* *Overend, Gurney, & Co.* agree to give up *B. & Co.*'s drafts on *S. & Co.* on receipt of the said remittances under rebate. In the event of *S. & Co.* being brought under cash advances, *J. S. B. & B.* agree to find cash to the extent of one third the amount." In 1863 *J. S. B.*, one of the members of the firm of *J. S. B. & B.*, retired from the firm, which was carried on under the name of *T. B. & Bro.*, and the agreement of 1862 was continued by that firm with the two other firms of *S. & Co.* and *B. & Co.* Under it certain goods were, in September,

INSOLVENCY—continued.**6. ORDER AND DISPOSITION—continued.****Order and disposition—continued.**

October, and November 1866, purchased by the plaintiff, and shipped to *B. & Co.*, on triplicate account, and bills were drawn by the plaintiff on *S. & Co.*, as agreed, and were deposited with *A. C. & Co.*, not with *O. G. & Co.* On the 2nd January 1867, in consideration of the plaintiff taking on himself all the risk attaching to the said goods, *S. & Co.* and *B. & Co.* transferred all their right, title, and interest in the said goods to the plaintiff. This agreement was signed on behalf of *B. & Co.* by *L. B.* in his own name, one of the members of the firm then in London, who stated that he had the authority of his partners for so doing. On this agreement being made, *B. & Co.*, by the direction of the plaintiff, handed over the goods and documents relating thereto to *B. B. & Co.*, of Calcutta, on the 16th January 1867. *B. & Co.* stopped payment on the 27th December 1866, and *J. H. R.*, the only partner of that firm then in Calcutta, filed his petition in the Insolvent Court there on the 7th February 1867. *L. B.* filed his petition in the said Court on the 18th May 1867. *S. & Co.* stopped payment in December 1866. On the 16th March 1867, an order of the Insolvent Court was made in the matter of the petition of *J. H. R.*, and in pursuance of this order *B. B. & Co.* delivered to the defendant, as Official Assignee of the estate of the said *J. H. R.*, the unsold goods in their hands, which had been transferred to them by *B. & Co.*, and the net proceeds of those which they had sold. *Held* by *NORMAN, J.*, that the agreement of January 2nd was fraudulent and void against the creditors of *B. & Co.*, under 18 Eliz., Cap. 5, if not void under section 24 of the Insolvent Act. On appeal, held by *FRACOCK, C. J.*, that the goods were sent to *B. & Co.* on a special trust, and there was a specific appropriation of the proceeds binding in the case either in the insolvency or bankruptcy; that the agreement of January 2nd was valid and binding on the assignee of *B. & Co.*; that by it the property in the goods passed to *T. B. & Bro.*; but if it did not, the proceeds were specifically appropriated to taking up the bills of *B. & Co.* on *S. & Co.*; and until they were paid, *B. & Co.* had no interest in the goods which could justify their assignee in stopping the remittance of the proceeds or of taking the property out of the possession of *B. B. & Co.*; that the plaintiff was entitled to the proceeds with interest from the time the proceeds and goods were handed over to the assignee, and that the goods were not in the order and disposition of *J. H. R.* at the time of his filing his petition within section 23 of the Insolvent Act. *Per MARBY, J.*—Each of the two firms and Barlow were in the outset part owners of these goods, and each became liable to the others to contribute his share towards the cost price thereof. In November 1866 there ceased to be a binding agreement to remit the proceeds to *O. G. & Co.*, and no new agreement was substituted. The agreement of 2nd January did not renew the right to have the proceeds remitted for special appropriation, and it was moreover a fraudulent preference and void so far as *B. & Co.* were concerned. On 16th January, when the goods were transferred to

INSOLVENCY—continued.**6. ORDER AND DISPOSITION—continued.****Order and disposition—continued.**

the plaintiff, he was merely a creditor, and therefore a transfer for his benefit, within two months of filing the petition of insolvency, was void under section 24 of the Insolvent Act. *BARLOW v. COCHRANE*

[2 B. L. R., O. C., 56]

Affirmed by the Privy Council, where it was held that a firm, though insolvent, may part with or put an end to a current speculation, the result of which is still uncertain, on the best terms procurable, without any imputation of fraud; so also the abandonment of a speculation whilst the result is uncertain may be both honest and politic, as it entirely differs from undue preference of one creditor to others after a debt has been incurred. *MILLER v. BARLOW*

[14 Moore's I. A., 209]

33. Insolvent Act, s. 24.—On the night previous to *B.'s* being adjudicated insolvent, about 10 P.M., the firm of *K. B. D.*, at their place of business, promised to give *B.* a loan of Rs5,000 if he would the next morning deliver to them goods to that amount, and would, in the meantime, satisfy them that he had sufficient goods in his godown, and allow the firm of *K. B. D.* to put their lock on the door of the godown to secure the goods until they had received the value of the loan. Thereupon *B.* took the gomastah of the firm of *K. B. D.* to his godown, let him see that it contained goods worth more than Rs5,000, and allowed him to put a lock on the door, *B.* at the same time replacing his own locks. The gomastah and *B.* then returned to the office of *K. B. D.*, where Rs5,000 were paid to *B.*, who promised to deliver the next morning Rs5,000 worth of goods out of the godown which had been locked up. Having received the money, *B.* absconded from Calcutta that same night and never returned to his place of business. The next day he was adjudicated an insolvent. *Held* that the goods in the godown were not in the order and disposition of *B.* within the meaning of section 24 of the Insolvent Act. *IN THE MATTER OF BUNGSEEDHUR KHETTRY. CLAIM OF RAMLALL BUDHEE DOSS* . . . I. L. R., 2 Calc., 359

34. Insolvent Act, s. 23.—Assignment of shares.—Constructive trustee.—*N.*, an original allottee of five shares in the *A.* company, assigned them to *B.* No transfer was executed, and no notice of the assignment was given to the company, which subsequently went into liquidation. *N.* became insolvent. *B.* sued the liquidators of the company for the amount due in respect of the five shares on the first distribution of assets. *Held* that, at the time of *N.'s* insolvency, the plaintiff was the true owner of the shares within the meaning of section 23 of the Insolvent Act (11 & 12 Victoria, Cap. 21), and that as he had omitted to give notice to the company of the assignment to him, and as he had procured no transfer to be executed in his favour which the company, under their articles of association, were bound to recognise, he had consented that the shares should remain in the order and disposition of *N.*, and, consequently, the shares and the right to

INSOLVENCY—continued.**6. ORDER AND DISPOSITION—continued.****Order and disposition—continued.**

receive any distribution of assets in respect of them vested, upon *N.*'s insolvency, in the Official Assignee. *Semble*.—The principle that a person who is under an obligation to convey property to another is, in a Court of Equity, a trustee of such property for the latter, does not apply in cases where the reputed ownership clause of the Insolvent Act is in question. *Ex parte Littledale*, 6 *DeGee*, *M. & G.*, 714; and *In re Sketchley*, 1 *DeGee & J.*, 168, followed. **BEHAVAN MULJI v. KAVASJI JASAWALA**

[I. L. R., 2 Bom., 542]

35. ————— *Insolvent Act (11 and 12 Vict., c. 21), s. 24.*—*Goods pledged by insolvent and re-delivered to him on commission sale.*—*M.*, who carried on the business of a watch and clock maker in Calcutta, borrowed from *D. M.* Rs. 6,000, for which he gave a promissory note, and, as collateral security for the payment of which sum he pledged certain articles consisting of watches, clocks, &c., with *D. M.* The articles remained for some months in the custody of *D. M.*, who then re-delivered them to *M.* for sale on commission, the proceeds to be applied in liquidation of the debt. *M.* gave a receipt for the articles, and some of them were sold by *M.* on those terms. On the 2nd of May 1877, *M.* filed his petition in the Insolvent Court, and such of the articles as remained unsold came into the possession of the Official Assignee. On an application by *D. M.* claiming the articles and praying for an order directing the Official Assignee to return them, it was alleged that it was customary for European jewellers in Calcutta to receive articles on commission sale, and it was contended that such receipt did not divest the true owners of possession. *Held*, the articles were rightly vested in the Official Assignee. On the facts, the insolvent was the true owner of the goods. *D. M.*'s interest ceased when he ceased to have possession of the goods; the receipt in this view only amounted to an agreement to sell and apply the proceeds in liquidation of the debt, and it could have been proved and a dividend recovered on it under the insolvency. Even if the interest of *D. M.* did not cease, the goods were in the order and disposition of the insolvent, there being nothing to show any publicity or notoriety in the change of possession of the goods. No amount of evidence would convince the Court that there was a custom of purchasing goods from a retail dealer and leaving them with him for commission sale. *Semble*.—No such arrangement would be upheld as against the Official Assignee. **IN RE MURRAY. EX PARTE DWARAKANATH MITTER**

[I. L. R., 3 Cal., 58]

36. ————— *Insolvent Act (11 and 12 Vict., c. 21), s. 23.*—*Reputed ownership.*—*Possession.*—*Consent of true owner.*—*Partner out of jurisdiction.*—*Mortgage of chattels.*—*Priority.*—In 1878 the members of the firm of *A. & Co.* mortgaged the live and dead stock, chattels, and effects belonging to the firm to *B.*, the mortgage deed containing a clause to the effect that as long as there was anything due on the mortgage, the mort-

INSOLVENCY—continued.**6. ORDER AND DISPOSITION—continued.****Order and disposition—continued.**

gaged property should be treated and considered as the property and in the order and disposition of the mortgagee. *A. & Co.* subsequently obtained further advances from *B.*; at this time *A.* was residing out of the jurisdiction of the Court, and the instruments creating the further charges were signed by his attorney. *C.* and *D.*, the two members of the firm residing in Calcutta, remained in possession of the mortgaged property up to the 10th May 1880, when they became insolvent, and their property was vested in the Official Assignee, who entered into possession. On the 12th May the mortgagee also entered into possession. On the 26th June, *A.*, the remaining partner of the firm, returned to Calcutta and filed his petition of insolvency. Upon a petition by the mortgagee claiming to be paid his mortgage-money in priority to the other creditors of the firm,—*Held* that the goods and chattels of the firm which were covered by the mortgage and further charges did not vest in the Official Assignee upon the insolvency of *C.* and *D. Reynolds v. Bowley*, *L. R.*, 2 *Q. B.*, 474; *Ex parte Dorman*, *L. R.*, 8 *Ch.*, 51; and *In re Hill*, *Ex parte Legage*, *I. L. R.*, 6 *Cal.*, 636, note, distinguished. **IN THE MATTER OF MORGAN. GUBBOY v. MILLER**

[I. L. R., 6 Cal., 633
[7 C. L. R., 29; 9 C. L. R., 385]

37. ————— *Insolvent Act (11 and 12 Vict., c. 21), s. 23.*—Where goods are in the order and disposition of any person under such circumstances as to enable him by means of them to obtain false credit, then the owner of the goods, who has permitted him to obtain false credit, must suffer the penalty of losing such goods for the benefit of those who have given the credit. **IN THE MATTER OF MARSHALL**

[I. L. R., 7 Cal., 421
Affirmed on appeal. **IN THE MATTER OF MARSHALL. BOILBAU v. MILLER** 10 C. L. R., 591]

38. ————— *Insolvent Act (11 and 12 Vict., c. 21), s. 23.*—*Reputed ownership.*—In 1883 *B.* mortgaged to one *D.* certain furniture standing in a house leased by him from one *F.* The mortgage-deed provided that until default the mortgagor should have free use of the mortgaged property; that the mortgagee should be at liberty to place a durwan in charge of the furniture; and that on default by the mortgagor the mortgagee should have power to enter the premises and deal with the goods as his own. A durwan was placed in charge, and in January 1884 the mortgagor defaulted and was pressed for payment at different times previous to August 1884. On the 1st August the mortgagee sent to the premises people from Messrs. Mackenzie, Lyall & Co., for the purpose of lotting and cataloguing the furniture. Admittance into the house was refused to them by *B.*, although they were admitted into the compound by the durwan of the mortgagee. At about this date (but whether before or after the 1st August was not clear) *B.* asked for further time for payment, which was granted. On the 4th August the furniture was attached by *F.* in execution of a decree for rent. On the 6th August *B.* filed his peti-

INSOLVENCY—continued.**6. ORDER AND DISPOSITION—continued.****Order and disposition—continued.**

tion in insolvency, and on the 15th September the furniture was sold by the Official Assignee. On a hearing of the claims put in by the mortgagee and *V.*—*Held* that, on the 8th August, the furniture was not in the possession, order, or disposition of *B.* as reputed owner with the consent of the true owner; that under the circumstances brought out in evidence, the fact that further time for payment was granted had not the effect of a fresh consent on the part of the mortgagee to the goods being in the possession of *B.* as reputed owner; that even if this had been so, the attachment under *V.*'s execution took the goods out of the order and disposition of *B.*, and that the mortgagee was entitled to the benefit of that circumstance. *In re Agabeg, 2 Ind. Jur., N. S., 840, questioned. IN THE MATTER OF R. BROWN (CLAIM OF DWARAKANATH MITTER)*

[I. L. R., 12 Calc., 629]

7. VOLUNTARY CONVEYANCES.**39. — Assignment by debtor.—**

Fraud on creditors.—Fraudulent assignment.—Where *G. & Co.* were unable to meet the bills of *T. & Co.*, and wrote to *T. & Co.*, "If you do not arrange for renewal or payment of them, we must stop payment;" *G. & Co.*, knowing that they were insolvent, but for the purpose of delay, and not for any benefit to the estate, agreed to mortgage to *T. & Co.* what was substantially the whole of the estate. *T. & Co.* renewed the bills, and the bills again falling due, and *G. & Co.* being unable to meet them, *T. & Co.* paid them. Shortly afterwards *G. & Co.* filed their petition of insolvency, without having carried out the agreement. In a suit by *T. & Co.*, the Court refused to decree specific performance of the agreement, and held that it was a fraud against the general body of the creditors. *TEIL v. GORDON*

[2 Ind. Jur., N. S., 142]

40. — Assignment to one creditor.—Fraud.—Vendor remaining in possession.—When *A.*, a holder of a hundi drawn up and accepted by the firm of *B.*, procured that firm, when it was on the verge of insolvency, to sell him certain property in payment of the hundi; but, before his obtaining possession, *C.*, another creditor of, and decree-holder against, the firm, got it sold in satisfaction of his debt.—*Held* on *A.*'s suit that the sale in his favour could not, in the absence of any finding of fraud, be set aside merely on the ground that the effect of it had been to deprive the other creditors of their powers to have recourse to the property. *DALOO RAM v. SHIVA PRSEHAD*

[2 Agra, 71]

41. — Insolvent Act, s.

24.—Voluntary assignment.—Deposit of title-deeds.—Right of Official Assignee.—The firm of *C. N. & Co.*, Calcutta, had an account with a bank, of which *R.* was the manager, under an arrangement that the bank should discount bills accepted by *C. N. & Co.* to a certain amount, and that *C. N. & Co.* should

INSOLVENCY—continued.**7. VOLUNTARY CONVEYANCES—continued.****Assignment by debtor—continued.**

keep in the bank a certain fixed cash balance. In November, *E.*, finding that the limit of the discount accommodation had been exceeded and the cash account overdrawn, declined to discount any more bills unless security were given for the amount then due to the bank. *A.*, the only partner in the firm of *C. N. & Co.* then in Calcutta, verbally promised on 24th November to deposit with the bank the title-deeds of the premises in which *C. N. & Co.* carried on their business; and in consideration of such promise *E.* discounted further bills from 24th to 29th November. *A.* sent to *E.* a letter on 25th November as follows: "In pursuance of the conversation the writer had with you yesterday, we now deposit the title-deeds of landed house property as security against our discount account." The letter enclosed certain title-deeds, of which *E.* acknowledged the receipt. *E.* subsequently discovered they were not the title-deeds which *A.* had promised to deposit, and of this he gave *A.* notice by letter on 28th November. *C. N. & Co.*, on 5th November 1870, suspended payment, and by the usual order their estate and effects vested in the Official Assignee, who thereupon, finding that the bank claimed a lien on the deeds, brought a suit against the bank for recovery of them. *Held* that the deposit of the title-deeds was not void under section 24 of the Insolvent Act. *MILLER v. CHARTERED MERCANTILE BANK OF INDIA, LONDON, AND CHINA*

[6 B. L. R., 701]

42. — Insolvent Act, s.

24.—Assignment to trustees for benefit of creditors.—Voluntary assignment.—Onus probandi.—Right of creditor to set aside deed.—Where two insolvent partners, being sued by two of their creditors, and urgently pressed by others, called a meeting of their creditors to consult them as to the course to be adopted, and the creditors at such meeting resolved that the affairs of the insolvents should be wound up, under a deed of assignment in trust for the benefit of their creditors, and, in pursuance of this resolution (which was not shown to have been proposed by or to have originated with the insolvents), a deed of composition was drawn up and executed by the insolvents, whereby they assigned their entire property to trustees for the benefit of all their creditors, who, before a certain specified time, should sign the deed. It was held that, under these circumstances, the composition deed could not be considered a voluntary assignment within the meaning of section 24 of the Insolvent Debtors Act, and the deed was accordingly upheld. The onus of proving an assignment to be voluntary within the meaning of the above section lies upon the person impugning it. *Quare*,—Whether one of the creditors of an insolvent, without the consent or without using the name of the Official Assignee, can take steps in the Insolvent Court with a view to have an assignment by an insolvent to trustees set aside as voluntary. *IN RE DHANJIBHAI KHARSETJI RATNAGAR*

[10 Bom., 327]

43. — Insolvent Act, s.

24.—"Voluntary" conveyance by insolvent.—

INSOLVENCY—continued.**7. VOLUNTARY CONVEYANCES—continued.****Assignment by debtor—continued.**

Where two days before a person was adjudicated an insolvent and his property had by order vested in the Official Assignee, under the provisions of Statute 11 and 12 Victoria, Cap. 21, such person had, not spontaneously, but in consequence of being pressed, assigned to a particular creditor certain property,—held by *STUART, C. J.*, that such assignment was not "voluntary" within the meaning of section 24 of that statute, and was therefore not fraudulent and void under that section as against the Official Assignee. *Held* by *PEARSON, J.*, that such assignment was not a voluntary one in the sense that it was made spontaneously without pressure; but as the vesting order was not passed on a petition by the insolvent for his discharge, that section was not relevant to the case. *SHRO PRASAD v. MILLER*. I. L. R., 2 All., 474

In the same case before the Privy Council, a firm, trading in Calcutta, having been there adjudicated insolvent, the transfer of a debt, transferred by one of its branches, located in Lucknow, was held upon the evidence to have been a voluntary assignment, void under section 24 of the Statute 11 and 12 Victoria, Cap. 21, as against the Official Assignee. A draft, dated of the day on which, at night, the insolvent firm stopped payment in Calcutta, adjudication having followed on the second day after, purported to have been drawn by a debtor owing money to the Lucknow branch under its assignment in favour of the defendant to the amount of such debt. The latter received the money. *Held* that, under all the circumstances, it was not necessary to decide whether the transfer was made on the date which the draft purported to bear, the conclusion, upon all the facts, being that the debt had been transferred "voluntarily" within the meaning of section 24. *MILLER v. SHRO PRASAD*. I. L. R., 6 All., 84 [L. R., 10 I. A., 98]

44. ——— Insolvent Act, ss. 23, 24.—Equitable assignment of goods as security.—Jokhmi hundi.—The plaintiffs at N. purchased, on 22nd December 1878, from L., for Rs. 4,000, a jokhmi hundi, drawn in favour of plaintiffs by L. upon his firm in Bombay. The hundi contained a statement that it was "drawn against" twenty-nine bales of wood shipped at Tuna, and it was made payable eight days after the safe arrival of the ship at Bombay. The plaintiffs obtained from L., at the same time, a letter addressed by him to his firm at Bombay, which contained the following passage: "Upon you a jokhmi hundi is drawn, the particulars whereof are as follows: (Rs. 4,000.) The value having been received from Jadowji Gopalji, hundis for Rs. 4,000 drawn against 29 bags of sheep's wool shipped on board the 'Hariprasad,' owner Dayal Morarji, from the seaport town of Tuna On the safe arrival of the vessel do you be good enough to land the goods, and deliver the same to Jadowji Gopalji; and as to the jokhmi hundis drawn before, if in respect thereof any money has to be paid to Jadowji Gopalji, do you be good enough to pay the same." The above letter was duly presented by

INSOLVENCY—continued.**7. VOLUNTARY CONVEYANCES—continued.****Assignment by debtor—continued.**

the plaintiffs to L.'s Bombay firm on the 27th December 1878. Evidence was given that, at the time the plaintiffs obtained the hundi and the letter, the goods referred to had been already shipped. On the 1st January 1879 the firm of L. was adjudicated insolvent by the High Court of Bombay. On the 5th January 1879 the ship arrived at Bombay with the goods in question on board, and on the 7th January the ship-owners delivered them to the Official Assignee. In a suit against the Official Assignee (as assignee of the estate and effects of L.) and the ship-owners to recover possession of the wool, or the amount of the hundi,—*Held*, on the authority of *Burn v. Carvalho, & M. & Cr., 702*, that the letter of the 22nd December 1878 operated as an equitable assignment of the wool to the plaintiffs, on the safe arrival of the vessel, as a security for the payment of the hundi, and that the plaintiffs were therefore entitled to obtain possession of the wool. *JADOWJI GOPALJI v. JETHA SHAMJI*. I. L. R., 4 Bom., 333

45. ——— Statute 11 and 12 Vict., c. 21, s. 24.—Insolvent.—Voluntary transfer.—On the 12th March 1881 a firm, the partners of which were subsequently, within two months from that date, adjudicated insolvents under 11 and 12 Victoria, Cap. 21, suspended payment. On the night of the previous day, the 11th March, one of the creditors of the firm, the impending bankruptcy of the firm having become known, urged the latter to make over a part of their stock-in-trade as security for the debt, and to this the insolvents consented. The only pressure which appeared to have been exercised was that, on the 11th March, security was demanded from the insolvents. *Held* that there having been no pressure which could not be resisted, and no legal proceedings having existed against the insolvents, or which they could have feared, the transaction was a voluntary transfer, and therefore void under section 24 of 11 and 12 Victoria, Cap. 21. *PHULCHAND v. MILLER*. I. L. R., 7 All., 340

8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

46. ——— Application of Civil Procedure Code.—*Civil Procedure Code, 1859, ss. 273 and 280.—Right of Official Assignee.*—Sections 273 and 280 of Act VIII of 1859 did not apply to cases of insolvency where the whole of the debtor's property is vested in the Official Assignee, and cannot be handed over to the Court in the manner contemplated by those sections. *KISSORREMOHUN CHATTERJEE v. KONNOY LOH DUTT*. 1 Ind. Jur., N. S., 247

47. ——— Civil Procedure Code, 1859, ss. 273-280.—The sections of Act VIII of 1859 (273-280, &c.) which enabled a defendant, arrested or in prison in execution of a decree, to obtain his discharge on application to the Civil Court, and giving up all his property, had no application in cases in which the prisoner had become

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Application of Civil Procedure Code—continued.**

insolvent, and the Court for the Relief of Insolvent Debtors had his case pending before it; but they did apply where the petition in insolvency had been dismissed or otherwise fully disposed of. *IN RE SOOR-PERSAUD* 2 Ind. Jur., N. S., 91

48. ——— Small Cause Court debtors.—*Civil Procedure Code, 1877, s. 336, cl. 5; and ch. XX, ss. 344-360.*—Clause 5 of section 336 of Act X of 1877 applies to Small Cause Court debtors: such persons can obtain the benefit of Chapter XX of that Act by applying to a Court which has jurisdiction under that chapter. *MOIDIN v. SUNDARAMUTHIA* I. L. R., 2 Mad., 9

49. ——— Application to Collector's Court for adjudication.—*Civil Procedure Code, 1877, ss. 2 and 344.*—*Bengal Civil Courts' Act, 1871, s. 15.*—*Bengal Act VII of 1868.*—A Collector's Court, though having Civil Court powers in some cases, is not a Civil Court under section 15, Bengal Civil Courts Act, 1871, nor is it subordinate to a District Court within the meaning of section 2 of the Civil Procedure Code, 1877. An application under section 344 of Act X of 1877, for a declaration of insolvency made by a person imprisoned by order of the Collector under the provisions of Bengal Act VII of 1868, cannot be entertained. *IN THE MATTER OF BODRU ROHMAN* 3 C. L. R., 508

50. ——— Application to Munsif's Court for adjudication.—*Civil Procedure Code, 1882, ss. 344, 360.*—*Attachment of debtor's goods.*—*Applications to Munsif's Court.*—A District Munsif's Court invested with insolvency jurisdiction by the Local Government under section 360 of the Code of Civil Procedure cannot entertain an application made by a judgment-debtor, whose property has been attached, to be declared an insolvent, except where such application is transferred to it by the District Court. *NARASAYTA v. NARASIMMA*

[I. L. R., 7 Mad., 510]

51. ——— Application on insufficient grounds.—*Civil Procedure Code, 1882, s. 244.*—*Fulfilment of requirements of section after application.*—When an application to be declared an insolvent under section 344 of the Civil Procedure Code, 1882, was preferred, the requirements had not been fulfilled, as the applicant had not been arrested or imprisoned in execution of a decree for money, nor had his property been attached in execution of such a decree. Eleven days after the application had been preferred the applicant's property was attached in execution of such a decree. One of the creditors subsequently objected to the application on the ground that when it was preferred the requirements of section 344 had not been fulfilled. *Held* that the application should not on that ground have been dismissed. *MAKHAN LAL v. GULZARI LAL* I. L. R., 6 All., 289

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.**

52. ——— Application for adjudication after order for attachment of property.—*Civil Procedure Code, 1877, ss. 344 to 360.*—*Jurisdiction.*—*Subordinate and District Courts.*—The lower Court ordered the attachment of a house belonging to the judgment-debtor in execution of a money-decree passed against him by that Court. The judgment-debtor then applied to be declared an insolvent under section 344 of the Civil Procedure Code, Act X of 1877. *Held* that it could not entertain the application. *PURBHUDAS VELJI v. CHUGUN RAICHAND* I. L. R., 8 Bom., 196

53. ——— Discharge, Right of debtor to.—*Civil Procedure Code, 1859, s. 273.*—The only question was under this section whether the debtor was possessed or not of any means. If not, he was entitled to his discharge. *SIDDER GOPAL SADHOO KHAN v. NUND LALL DEY* 4 W. R., Mis., 8

54. ——— Civil Procedure Code, 1859, s. 273.—*Act XXIII of 1861, s. 8.*—Where a lower Appellate Court, from the replies of a judgment-debtor whom it examined, and from the circumstances of the case as set forth in the evidence, came to the conclusion that the judgment-debtor had not proved that he was not possessed of property, so as to be entitled to the benefit of section 273, Act VIII of 1859, and section 8, Act XXIII of 1861,—*Held* that there was no error of law in this finding. *ABDOOL RUHMAN v. ABDOOL SOBHAN* 12 W. R., 125

55. ——— Proof of bona fides.—*Procedure.*—In making the application prescribed by Act VIII of 1859, section 273, it was necessary for the judgment-debtor to satisfy the Court that he was acting *bona fide*. After the Court was satisfied that the allegations made by the judgment-debtor in his application and under examination were true, it might call upon the execution-creditor to show cause. *GLADSTONE, WYLLIE & Co. v. WOONESH CHUNDER CHATTERJEE* 25 W. R., 96

56. ——— Civil Procedure Code, 1859, s. 273.—*Mala fides.*—*C. D.* repaired *P.*'s ship on his express representation that the repairs would be paid for by a letter of credit which the owners had sent for that purpose. *P.* applied the funds to the payment of other creditors. *C. D.* sued him for the amount of the repairs, and obtained a decree, in execution of which *P.* was imprisoned. The Court having refused to give him his discharge under section 273 of Act VIII of 1859, he appealed. *Held*, on appeal, that a person who gets work done on the representation that it is to be paid for out of certain specific funds, which funds he afterwards applies in paying sums due to other creditors, is guilty of *mala fides* and of giving undue preference, and is therefore not entitled to his discharge under section 273 of Act VIII of 1859. *PASSMORE v. CALCUTTA DOCKING COMPANY*

[Bourke, A. O. C., 74]

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Discharge, Right of debtor to—continued.**

57. ————— *Civil Procedure Code, 1859, s. 273.*—*Circumstances entitling debtor to release.*—Where the judgment-debtor applied for his discharge under section 273 of Act VIII of 1859, and the Court not being satisfied of his inability to pay, and that he was honest and *bona fide* in dealing with his property, refused the application; *Held* that a prisoner for debt, if he be perfectly honest, without present means of payment, and has given every facility in his power to his creditors taking possession of his property, is entitled to release: that nothing short of this will entitle him to it. **CHYET RAM v. RAMCHUNDER DUTT**

[Bourke, O. C., 101

58. ————— *Civil Procedure Code, 1859, s. 273; and Act XXIII of 1861, s. 8.*—*Application of the Small Cause Courts.*—A defendant, arrested in execution of a decree of a Small Cause Court, applied to that Court, under section 273 of the Civil Procedure Code, averring that the only property which he had was immovable property, and he was willing to place it at the disposal of the Court. *Held* that the judgment-creditor was liable to be called upon to show cause for not proceeding against the property described in the application in execution of his decree. **SHAW v. SUBRAMIAH** 5 Mad., 108

59. ————— *Civil Procedure Code, 1859, s. 273.*—*Insolvency.*—*Order for discharge.*—*Jurisdiction of District Judge.*—Except under very special circumstances, a Judge ought not to make an order for the discharge of a defendant under Act VIII of 1859, section 273. A party who voluntarily brings himself into the Insolvency Court in Calcutta was incapable of applying to a District Judge for a discharge under the above section, the property which he may be possessed of within the jurisdiction of the former Court not being subject to the latter. **KISTO LALL GOSSAIN v. JOY GOPAL BYSAOK** 21 W. R., 185

60. ————— *Judgment-debtor.*—*Application for discharge.*—*Salary.*—A judgment-debtor in receipt of a monthly stipend was not entitled to obtain a discharge under section 273 of Act VIII of 1859, unless he submitted to place that stipend at the disposal of the Court, that provision might be made for satisfaction of the debt. **ASDUDOWLAH REZA HOSSAIN KHAN v. HAMISADOWLAH AHED KHAN** . 6 B. L. R., 575: 15 W. R., 204

But see **COOMBE v. CAW** . 13 B. L. R., 268 [22 W. R., 257]

61. ————— *Arrest in execution of decrees.*—*Ground for discharge.*—*Act VIII of 1859, s. 273.*—*Salary.*—The fact that a judgment-debtor, who had been arrested in execution of a money-decree, was in receipt of a salary, was not sufficient cause to show against his discharge under section 8 of Act XXIII of 1861. **COOMBE v. CAW** [13 B. L. R., 268: 22 W. R., 257]

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Discharge, Right of debtor to—continued.**

62. ————— *Civil Procedure Code, 1859, s. 280.*—*Evidence.*—Where a judgment-debtor applied for release from imprisonment under the provisions of section 280, Act VIII of 1859, and the judgment-creditor adduced *prima facie* evidence that the applicant had wilfully concealed property, or rights and interests in property, which evidence was rebutted, the Judge was held to have done right in rejecting the application. When a party seeks the assistance of a Court in any case in which the best knowledge of the disputed facts is with himself, he is bound to place that knowledge before the Court with the sanction of an oath. **GUNGA CHURN DHUR v. KULINGA PA SETER** . . . 12 W. R., 422

63. ————— *Onus probandi.*—*Civil Procedure Code, 1859, s. 280.*—Where a judgment-debtor applied from jail for his own release, putting in an affidavit and afterwards a deposition on oath, to the effect that he had no property whatever to satisfy the decree against him,—*Held* that it was incumbent on the decree-holder to prove that these statements were false, and that, in the absence of such evidence, the judgment-debtor was entitled to his discharge. **ABDOOL SETTAR v. MAKHUM KOORH** 25 W. R., 182

64. ————— *Civil Procedure Code, 1859, s. 273.*—*Act XXIII of 1861, s. 8.*—*Concealment of property.*—Where a judgment-debtor, arrested in execution of a decree, applied for his discharge under section 273, Act VIII of 1859, but while pretending to furnish a complete statement of his property was shown to have concealed a portion, the lower Court was held to have acted properly, under section 8, Act XXIII of 1861, in ordering him to prison. **GUNGA GOBIND MUNDUL v. BONOMALEE PAUL** 14 W. R., 54

65. ————— *Act XXIII of 1861, s. 8.*—*Order illegal for non-compliance with provisions of the law.*—*Subsequent application for arrest.*—*Held* that an order discharging a judgment-debtor under section 8, Act XXIII of 1861, being illegal on account of non-compliance with the procedure prescribed by law, might be quashed and afterwards treated as a nullity, so as not to bar any subsequent application for arrest. **LUCHMEE NARAIN v. BHAIROW PERASHAD** . 1 Agra, Mis., 4

66. ————— *Act XXIII of 1861, s. 8.*—*Power of Judge to detain defendant in custody.*—The discretionary power of a Judge to detain a defendant in custody otherwise than by committing him to prison in execution of a decree was confined to the case provided for in Act XXIII of 1861, section 8. **SAHIB RAUTAN v. ISRAHIM RAUTAN** 1 Mad., 441

67. ————— *Act XXIII of 1861, s. 8.*—*Application for discharge.*—*Act VIII of 1859, ss. 273 and 280.*—Section 8 of Act XXIII applied only to applications made under section 273

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Discharge, Right of debtor to—continued.**

of Act VIII of 1859, not to applications made under section 280. **SMITH v. BOGGS**

[5 B. L. R., Ap., 21]

68. ——— Sufficiency of security.—The question of the sufficiency of the security tendered by the judgment-debtor is one entirely for the lower Court to determine. **IN THE MATTER OF BHOOBUN MOHUN BOSE**

[15 W. R., 571]

69. ——— Application to be declared insolvent.—*Civil Procedure Code, 1882, s. 844.—Onus probandi.*—A person applying under section 344 of the Code of Civil Procedure, must satisfy the Court that his case comes within the provisions of section 351, and the burden of proof lies upon him. **MUMTAZ HOSSAIN v. BRIJ MOHUN THAKOOR**

[I. L. R., 4 Cal., 888]

70. ——— Civil Procedure Code, 1882, s. 351.—Insolvent judgment-debtor.—“Unfair preference.”—J., in pursuance of a previous agreement with B., and on being pressed by B., who had a pecuniary claim against him, which nearly equalled half the amount of all the pecuniary claims against him, assigned to B. the whole of his property by way of sale, in consideration in part of B.'s pecuniary claim against him. *Held* that by such assignment J. did not give B. an “undue preference” to his other creditors within the meaning of section 351 of Act X of 1877. **JOAKIM v. SECRETARY OF STATE FOR INDIA**

I. L. R., 3 All., 530

71. ——— Civil Procedure Code, 1882, s. 351.—Insolvent judgment-debtor.—A judgment-debtor applied to be declared an insolvent. Certain of the claims against him were claimed under decrees. The Court of first instance refused the application, notwithstanding the statements in the application were substantially true, and the applicant had not committed any act of bad faith mentioned in section 351 of the Civil Procedure Code, on the ground that the applicant had contracted the debts for which such decrees had been made dishonestly, and that section gave the Court in such a case a discretionary power to refuse the application. *Held* that the Court of first instance had taken an erroneous view of section 351, and had assumed a wider discretion than the law conferred on it. If a person making an application to be declared an insolvent has not brought himself within clauses (a), (b), (c), or (d) of that section, then the Court has no discretion on other grounds to refuse the application. The bad faith, the reckless contracting of debts, the unfair preference of creditors, the transfer, removal, or concealment of property, the making false statements in the application, are all dealt with in section 351, and are intended to confine the category of acts of misconduct that will debar the applicant from obtaining the relief and protection he asks. **SALAMAT ALI v. MINAHAN**

I. L. R., 4 All., 387

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Application to be declared insolvent—continued.**

72. ——— Civil Procedure Code, 1882, s. 351 (a).—Insolvent judgment-debtor.—Accidental false statement in application.—Before rejecting an application by a judgment-debtor for a declaration of insolvency with reference to the provisions of section 351 (a) of the Civil Procedure Code, it is necessary that the Court should be satisfied that the applicant has wilfully made false statements: unintentional inaccuracies are not sufficient grounds for rejection. **KARIM BAKSH v. MISRI LAL**

[I. L. R., 7 All., 295]

73. ——— Civil Procedure Code, s. 351 (b).—Insolvent judgment-debtor.—“Property.”—Fraudulent intent.—Section 351 (b) of the Civil Procedure Code contemplates a case of active concealment, transfer, or removal of substantive property since the institution of the suit in which was passed the decree in execution of which the judgment-debtor was arrested or imprisoned, with intent to deprive the creditor or creditors of available assets for division; and it does not cover an omission by the judgment-debtor, in his application for a declaration of insolvency, of a statement as to his right to demand partition of ancestral estate in which he is a sharer, especially where there is no evidence of any intent to defraud. **SUKRIT NARAIN LAL v. RAGHUNATH SAHAI**

[I. L. R., 7 All., 445]

74. ——— Plaintiff imprisoned for costs of unsuccessful action.—A plaintiff imprisoned at the suit of the defendant for the costs of an unsuccessful action was not a proper object for the application of section 281, Act VIII of 1859. **IN THE MATTER OF BEENARUSSEE DOSS**

Cor., 128

75. ——— Application for discharge.—Plaintiff.—Imprisonment for costs of suit.—Section 281 of Act VIII of 1859 did not apply to a plaintiff in custody for the costs of a suit. **IN RE EDULJEE RUTTONJEE**

[10 B. L. R., Ap., 27]

76. ——— Civil Procedure Code, 1859, ss. 280 and 281.—Bad faith.—A person in custody who had been guilty of bad faith in the transactions relative to which he was detained, but not with regard to his application under section 280 of Act VIII of 1859, was entitled to his discharge. **ANONYMOUS**

1 Ind. Jur., N. S., 8

77. ——— Civil Procedure Code, 1859, s. 281.—Application for discharge.—“Bad faith.”—When an insolvent was brought up for the purpose of obtaining his discharge, *Held* that the “bad faith” mentioned in section 281, Act VIII of 1859, must be in respect of the debt for which he was imprisoned, and with regard to which the application was made. **ORIENTAL BANK v. MANIMADHAB SEN**

3 B. L. R., Ap., 14

78. ——— Application for discharge.—“Bad faith.”—Civil Procedure Code,

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Application to be declared insolvent—continued.**

1859, s. 281.—“Bad faith” in section 281, Act VIII of 1859, meant bad faith not only in respect of the application, but included bad faith on previous occasions. **SMITH v. BOGGS** . 5 B. L. R., Ap., 23

79. ——— *Application for discharge.*—“Bad faith.”—Civil Procedure Code, 1859, s. 281.—“Bad faith” in section 281 of Act VIII of 1859 referred only to bad faith in respect of an application under that section. **IN RE GURUDAS BOSH** . 7 B. L. R., Ap., 23

80. ——— *Application for discharge.*—“Bad faith.”—Civil Procedure Code, 1859, s. 281.—In an application for discharge under section 281, Act VIII of 1859, the “bad faith” must be bad faith in respect of the application. **BUTLER v. LLOYD** . 12 B. L. R., Ap., 12

81. ——— *Application for discharge.*—*Omission to state in petition where property would be found.*—In an application for discharge under sections 280 and 281 of Act VIII of 1859, the properties entered in the defendant's schedule consisted entirely of moveables, and the petition did not state the place or places where such property would be found. *Held*, it was a substantial defect in the application, which was refused. **WATKINS v. ROHRENS BULLUB** . 10 B. L. R., Ap., 11

82. ——— *Cost of deposition of defendant.*—Where the plaintiff, in order to make the proof referred to in section 281, Act VIII of 1859, chooses to examine the defendant, he must pay for the oath and the cost of reducing the deposition of the witness to writing. It would be otherwise under section 8, Act XXIII of 1861, in which case the fee is mandable from the applicant. **EDMOND v. NIERSES**
[8 B. L. R., Ap., 22; 16 W. R., 84]

83. ——— *Civil Procedure Code, 1859, ss. 275, 281.*—*Application for discharge.*—“Bad faith.”—The acts of bad faith referred to in sections 275 and 281 were not limited to acts of bad faith committed by the prisoner in his application for discharge, or for the purpose of procuring his discharge, but included acts of bad faith in the manner of incurring his original liability. **IN RE SCOPEHAUD** . 2 Ind. Jur., N. S., 91

IN RE SIBCHUNDER KURMOKAR
[2 Ind. Jur., N. S., 93, note]

84. ——— *Civil Procedure Code, 1877, s. 351.*—*Acts of bad faith.*—“Matter of the application.”—The words used in clause (d) of section 351, “the matter of the application,” embrace the insolvency, and all the facts and circumstances material to explain the insolvency. Acts of bad faith towards creditors just at the period at which the applicant was contemplating insolvency may be held to be part of the matter of the applica-

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Application to be declared insolvent—continued.**

tion. A Judge would not be exercising a right discretion under section 351 if he refused relief in the case of persons who, although knowing that they had not the means of paying at the time the debt was contracted, yet honestly believed upon reasonable grounds that they would have the means of paying eventually. **BAVAORI PAKKI v. PINEOR, LESLIE, & Co.** . I. L. R., 2 Mad., 219

85. ——— *Judgment-debtor in jail.*—Civil Procedure Code.—Act X of 1882, ss. 836, 839, 844, 845, 849, 850, 351, 359.—*Arrest, imprisonment, Meaning of.*—11 & 19 Vic., c. 31, s. 24.—*Undue preference.*—A judgment-debtor arrested in execution of a decree for money, who has not, on his committal to jail, expressed his intention of applying to be declared an insolvent under Chapter XX of the Code of Civil Procedure, is nevertheless entitled during his imprisonment to make an application for that purpose; and the Court may, under section 349, pending the hearing of such application, release him on his finding security to appear when called upon. In deciding whether or no a payment made to a particular creditor amounts to an unfair preference within the meaning of section 351 of the Code, the Courts may fairly (where there is no other reason for impeaching the transaction as an unfair preference apart from the provisions of the Insolvent Act) refer to, and be guided by, the provisions of the Insolvent Act, which treats a transaction as an unfair preference only when it has occurred within a limited time before the insolvency proceedings. **IN THE MATTER OF HASTIN** . I. L. R., 11 Cal., 451

86. ——— *Civil Procedure Code, ss. 351, 352.*—*Omission of Court to follow proper procedure.*—*Declaration of insolvency, Effect of.*—A judgment-debtor having applied to be declared an insolvent under section 344 of the Code of Civil Procedure, entered the name of A. in the list of his creditors together with the amount of the debt. No creditors appearing to oppose the application or prove their debts, the Court, without framing a schedule as required by section 352, declared the judgment-debtor an insolvent under section 351. In a suit brought by A. to recover the debt,—*Held* that, as the provisions of section 352 had not been followed, the declaration under section 351 could not operate as a decree between the insolvent and A., and that A. was entitled to a decree. **ARUNACHALA v. AYYAVU**
[I. L. R., 7 Mad., 318]

87. ——— *Surety-bond.*—*Execution.*—Act VIII of 1859, s. 204.—A surety-bond taken by the Court under section 8 of Act XXIII of 1861, after judgment has been pronounced, could be enforced under section 204 of Act VIII of 1859. **ABDUL KARIM v. ABDUL HUQUE KAZI**
[8 B. L. R., 205; 15 W. R., 21]

88. ——— *Court fees.*—Act VIII of 1859, s. 281.—In cases under section 8, Act XXIII of 1861,

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Court fees—continued.**

the fee for the oath and the cost of reducing the deposition of the defendant to writing was payable by the defendant. **EDMOND v. NIERSES**

[8 B. L. R., Ap., 22: 16 W. R., 84]

89. ——— Application by “unscheduled” creditor.—*Civil Procedure Code, ss. 352, 353.*—*Creditor when to prove debt.*—*Meaning of “then” in s. 352.*—A judgment-debtor was declared an insolvent and a receiver of his property appointed, under section 351 of the Civil Procedure Code, and his creditors were ordered to come forward and prove their claims within a certain time. No creditor came forward for that purpose within such time, and in consequence the case was struck off the file, and the order appointing a receiver cancelled, and no schedule was framed under section 352. Subsequently a creditor applied to have his name entered in such schedule. *Held* that the applicant, notwithstanding no schedule had been framed, was an “unscheduled” creditor, and was therefore entitled, under section 353 of the Civil Procedure Code, to make the application. **MADHO PRASAD v. BHOLA NATH**

[I. L. R., 5 All., 268]

90. ——— Application by creditor to prove claim.—*Act XV of 1877 (Limitation Act), sch. ii, No. 178.*—*Civil Procedure Code, ss. 352, 353.*

—In July 1878 a person was declared an insolvent under the provisions of Chapter XX of the Civil Procedure Code. Only one creditor then proved his debt, and no schedule was framed. This creditor having applied for the sale of property belonging to the insolvent, another creditor, in May 1883, applied to prove his debt and to have his name inserted in the schedule which the Court then ordered to be framed. *Held* that such application could not be treated as made under section 353, as no schedule had been framed, but must be regarded as in the nature of a tender of proof of debt under section 352. **PARESHADI LAL v. CHUNNI LAL.** I. L. R., 6 All., 142

91. ——— Effect of discharge.—*Mortgage.*—*Secured creditor.*—*Receiver.*—*Code of Civil Procedure, 1877, ss. 352 to 355.*—A judgment-debtor, arrested and imprisoned in execution, applied to be declared an insolvent, and included a mortgage-debt in his application. Notice was issued to the mortgagee, who failed to appear and prove his claim, and was consequently omitted from the schedule prepared under section 352 of the Code of Civil Procedure. A receiver was appointed under section 354; the whole of the property of the insolvent was made over to the receiver, including the nine fields mortgaged, which the insolvent held as tenant of the mortgagee. The receiver sold one out of the nine fields to satisfy the creditors entered in the schedule, and ultimately restored the remaining eight fields to the judgment-debtor. The mortgagee then sued to eject the judgment-debtor for default in payment of rent. The latter pleaded his discharge under section 355. *Held* that the discharge did not affect the mortgage-debt,

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Effect of discharge—continued.**

and that a receiver is bound, as a condition of dealing with mortgaged property, in every case to pay off the mortgage, even when the mortgagee has not sought to be placed in the schedule,—the position of the mortgagee being essentially different from that of the unsecured creditor. *Case of Chetatal v. Nakansa (Printed judgments, Bombay, p. 89) distinguished.* **SHRIDHAR NARAYAN v. ATMARAM GOVIND**

[I. L. R., 7 Bom., 455]

92. ——— Declaration of insolvency ultra vires.—*Civil Procedure Code, 1882, ss. 344, 351, and 356.*—*Jurisdiction, Want of.*—*Execution of a decree.*—*Sale.*—*Completion of sale.*—The plaintiff Gangadhar obtained a decree against the defendant. In execution of that decree, certain property was attached on 5th March 1881. Although the judgment-debtor was not arrested in execution of that decree, nevertheless he, on the 18th October 1882, applied to the Court of the Subordinate Judge to be declared an insolvent under section 344 of the Code of Civil Procedure (Act XIV of 1882). He was declared an insolvent under that section, and the Nazir of the Court was appointed a receiver on 22nd December 1883. The receiver proceeded, under the direction of the Court, to convert the property of the insolvent into money under section 356 (a) of the Code. Certain immoveable property was purchased by the petitioner Tukaram for Rs. 1,032 on 4th December 1884. Tukaram, after some time, presented an application, in which he stated that inasmuch as the insolvent had not been arrested in execution of the decree obtained by Gangadhar, the Court had no jurisdiction; and he prayed that, if such was the case, the sale should be set aside, and the money returned to him. No appeal was preferred by the judgment-creditor, or other creditors of the insolvent, against the order of insolvency made under section 351 of the Code. The Subordinate Judge referred the following question to the High Court, *viz.*, “whether a Court which has declared the insolvency of a judgment-debtor can direct the receiver to proceed under section 356 of the Code and complete any sale, though the purchaser objects to the direction on the ground of want of jurisdiction in the Court, which objection seems to the Court to be valid, but too late.” *Held* that, as the declaration of insolvency was *ultra vires*, the Subordinate Judge should take no further steps to give effect to it, but leave the parties concerned to take such measures as they may be advised. **GANGADHAR BHIVRAY v. DATTO KRISHNAJI**

[I. L. R., 9 Bom., 368]

93. ——— Agreement to satisfy debts in full.—*Discharge from liability.*—*Civil Procedure Code, s. 358.*—An insolvent who had procured, and taken, and acted on an insolvency order which had been granted to him, because of the withdrawal of the opposition of his creditors, by reason solely of his engagement to pay a certain sum monthly until the whole of his debts should be discharged after his scheduled debts had been satisfied to the extent of

INSOLVENCY—continued.**8. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.****Agreement to satisfy debts in full—continued.**

one-third, applied under section 358 of the Civil Procedure Code to be declared discharged from further liability in respect of his debts. *Held* that, under the circumstances, his application had been properly refused. **DOWNES v. RICHMOND**

[I. L. R., 5 All., 258]

INSOLVENCY JURISDICTION, POWER TO INVEST COURT WITH—

See SMALL CAUSE COURT, MOPUSSIL—JURISDICTION—MISCELLANEOUS CASES.

[I. L. R., 2 Bom., 641]

INSOLVENT ACT (9 Geo. IV., c. 73, s. 36).

Insolvency.—Mutual credit.—Suit by assignees to recover surplus in bank.—Set-off of promissory notes.—*P. & Co.* having borrowed a large sum of the Bank of Bengal, deposited Company's paper with the Bank to a greater amount as a collateral security, accompanied with a written agreement authorising the Bank, in default of repayment of the loan by a given day, "to sell the Company's paper for the reimbursement of the Bank, rendering to Palmer & Co. any surplus." Before default was made in the repayment of the loan, *P. & Co.* were declared insolvent under the Insolvent Act, 9 George IV., Cap. 73, by the 36th section of which it was declared that where there had been mutual credit given by the insolvents and any other person, one debt or demand might be set off against the other; and that all such debts as might be proved under a commission of bankruptcy in England might be proved in the same manner under the Indian Insolvent Act. At the time of the adjudication of insolvency the Bank were also holders of two promissory notes of *P. & Co.* which they had discounted for them before the transaction of the loan, and the agreement as to deposit of the Company's paper. The time for repayment of the loan having expired, the Bank sold the Company's paper, the proceeds of which, after satisfying the principal and interest due on the loan, produced a considerable surplus. In an action by the assignees of *P. & Co.* against the Bank to recover the amount of this surplus, *Held* that the Bank could not set off the amount of the two promissory notes, and that the case did not come within the clause of mutual credit in the Insolvent Act. **YOUNG v. BANK OF BENGAL**

1 Moore's L. A., 87

INSOLVENT ACT (11 & 12 Vict., c. 21).

See CASES UNDER INSOLVENCY—ORDER AND DISPOSITION.

See CASES UNDER INSOLVENCY—VOLUNTARY CONVEYANCES.

See INTEREST—MISCELLANEOUS CASES—INSOLVENCY PROCEEDINGS.

[14 Moore's L. A., 209]

INSOLVENT ACT (11 & 12 Vict., c. 21)—continued.**1. ——— Jurisdiction.—Residence.—**

Where a person applied for the benefit of the provisions of the Insolvent Act on a petition in which he described himself as "William Cockburn, of Doomrah Factory in Tirhoot," and stated in his petition "that he is now residing at No. 19, Garden Reach, in the Suburbs of Calcutta, within the jurisdiction of the High Court,"—*Held* the petition was rightly dismissed for want of jurisdiction. **IN RE COCKBURN**

2 Ind. Jur., N. S., 326

2. ——— Jurisdiction.—British subject.—Residence.—

The insolvent, who was born in England, of English parents, was the widow of a surgeon and resided at Salem for some time before, and at the time of, the presentation of her petition to the Court. *Held* that the 5th section of the Insolvent Debtors Act is as applicable to a "British subject" (in the sense in which that appellation is used in the Charter of the late Supreme Court) resident within the jurisdiction of the High Court of Madras, as to an inhabitant within the local limits of the town of Madras. **IN THE MATTER OF RICKS**

[3 Mad., 151]

3. ——— Jurisdiction.—Residence.—

Letters Patent, cl. 18.—The petitioner came down from Cawnpore, where he had resided for some time, to Calcutta, to file his petition. He stated that he intended to settle in Calcutta on obtaining his discharge. *Held* that his being in Calcutta under these circumstances did not constitute residence. *Held*, also, that by clause 18 of the Letters Patent the jurisdiction of the Insolvent Court was narrowed to the Bengal Division of the Presidency of Fort William,—i.e., that portion of the Presidency over which the authority of the Lieutenant-Governor of Bengal extends. *Semle.*—Under section 5 of the Insolvent Act, the residence of the petitioner must be within the local limits of the ordinary original jurisdiction of the High Court. **IN THE MATTER OF TIEPKINS**

1 B. L. R., O. C., 84

4. ——— Jurisdiction.—Insolvent trader.—"Reside."

The word "reside" in section 5 of the Insolvent Act, when applicable to the insolvency of traders, includes an occupation for the purpose of trading, whether or not accompanied by sleeping or dwelling. **IN THE MATTER OF HOWARD BROTHERS**

11 B. L. R., 254

5. ——— Jurisdiction.—Bond fide residence.—

An insolvent who is not a European British subject must either be a *bond fide* resident in Calcutta at the time he presents his petition, or a trader carrying on business in Calcutta, otherwise he does not come within the jurisdiction of the Court under the Act. **IN THE MATTER OF TARINNY CHURN GORO**

11 B. L. R., Ap., 26

6. ——— Jurisdiction.—European

British subject out of jurisdiction of High Court.—

Residence.—A European British-born subject, residing in the Bombay Presidency, but outside the local limits of the jurisdiction of the High Court, is entitled to come to Bombay and present a petition in the

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 5—continued.

Court for the Relief of Insolvent Debtors and obtain the benefit of the Insolvent Act, as the original jurisdiction of the Supreme Court was in that respect continued to the High Court by clause 18 of its Letters Patent. *IN RE BLACKWELL*. 9 Bom., 461

7. ————— *Jurisdiction.—Residence.*—*A.*'s zemindari and dwelling-house in the district of D. having been sold, he came to Calcutta in May 1880, leaving his family with his relations, and filed his petition in the Court for the Relief of Insolvent Debtors in July. He remained in a hired house at Calcutta till September, when the Court rose for the vacation, and returned just before the end of the vacation, having in the interval gone to the district of D. to raise funds to carry on his insolvency proceedings. He had no residence outside the jurisdiction of the High Court. *Held* that he had no residence within the jurisdiction of the High Court within the meaning of section 5 of the Insolvency Act. *IN THE MATTER OF RAM PAUL SINGH*. 8 C. L. R., 14

1. ————— s. 6.—*Verification of schedule by affidavit.—Non-appearance of insolvent.*—In an application by insolvents for their personal discharge, the trustee under the bankruptcy of one *E.* in England appeared, and it was ordered that the further hearing should stand over with *ad interim* protection, and that the insolvents should amend their schedule. At this hearing, *A.*, one of the insolvents, was examined. On another application for personal discharge, it appeared that, subsequent to the former order, *A.* had left India on account of ill-health, and was therefore unable to verify the schedule. No opposition was entered, and the other insolvent, *M.*, the partner of *A.*, was in Court. *Held*, it was sufficient for the schedule to be attested by *M.*, but the Court directed that an affidavit of *A.* should be obtained verifying the schedule, sworn before a notary public or the British Consul. Personal discharge was allowed. *IN THE MATTER OF ANSTROTHER* [11 B. L. R., Ap., 34

2. ————— s. 6 and ss. 21 & 26.—*Effect of death of insolvent after filing his petition, but before filing schedule.*—On the 15th of March 1862, the petitioner brought an action in the Supreme Court against the insolvent to recover a sum of money, and on the 17th of that month the usual summons was served on the insolvent. On the last-mentioned day the insolvent was committed to prison on a charge of murder, notwithstanding which, on the 21st March 1862, he filed his petition in the Insolvent Court. The usual order was then passed, vesting all the insolvent's estate and effects in the Official Assignee from the date of the filing of the petition. On the 26th March 1862, the present petitioner recovered judgment in his action in the Supreme Court. The insolvent was tried and convicted and sentenced to death and on the 14th of April 1862, before the insolvent filed his schedule in the Insolvent Court, the sentence was carried into execution. *Held*, first, that section 6 of 11 and 12 Victoria, Cap. 21, is not imperative; and, secondly, that sections 21 and 26 of the same Act give the Offi-

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 6 and ss. 21 & 26—continued.

cial Assignee ample powers for the ascertainment and realisation of an insolvent's estate without the aid of a schedule. *IN RE KALLER CHURN KHETTRY* [1 Ind. Jur., O. S., 16

— s. 7.

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[1 N. W., Pt. 6, p. 81: Ed. 1873, 172

1. ————— *Vesting order, Validity of.—Signing vesting order.—Rule 57 of High Court Rules in Insolvency.*—*Held*, as to an objection taken, that the vesting orders relied upon by the Official Assignee were signed by himself and not by the clerk of the Insolvent Court (as directed by Rule 57); that in the face of an established practice of the office, that the clerk and the Official Assignee should, in the absence of either, and in the transaction of official business, sign one for the other, and no attempt having been made to set aside the vesting orders for irregularity, the District Court, as well as the High Court on appeal, was bound to regard such orders as in full force and effect. The High Court, however, considered the practice, so far as it permitted the Official Assignee to sign vesting orders, objectionable and requiring alteration. *GAMBLE v. BHOLAGIE* [2 Bom., 150: 2nd Ed., 147

2. ————— *Distress.—Vesting order.—Time of operation of.—Priority of Official Assignee.*—A distress levied after the filing of the petition of insolvency, but before the vesting order is drawn up, is, under sections 7 and 22, invalid as against the Official Assignee. A vesting order is made when it is given by the Court, and not at the time it is drawn up, signed and sealed. *IN THE MATTER OF BODEY*. . . . 5 B. L. R., 309

3. ————— *Official Assignee.—Vesting order.—Suits against insolvent.—Right of Official Assignee to be party.*—The rights of the Official Assignee of insolvents for the benefit of the general body of creditors, over the property of an insolvent lawfully vested in him, wherever that property may be, are rights that must be respected and recognised by all Courts, wheresoever situated. Where property of an insolvent vested in the Official Assignee by order of the Insolvent Court is attached in execution at the suit of a creditor of the insolvent, the proper course for the Official Assignee to adopt is to apply to the Court under sections 246 and 247 of the Civil Procedure Code to have the attachment removed, or, if too late to make such application, he may institute a suit to establish his right. *IN RE HUNT MONNET, & CO. EX PARTE GAMBLE v. BHOLAGIE MANGIE*. 1 Bom., 251

4. ————— *Effect of vesting order.*—Where an order has been made under section 7 of the Insolvent Act vesting the property of a judgment-debtor in the Official Assignee, the judgment-debtor has no saleable interest in the property. *RAM SOONDUR DEY v. SHESHI MOHUN PAL CHOWDHRY* [11 C. L. R., 369

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 7—continued.

5. ————— *Right to sue.—Vesting order.*—As soon as an order is made under section 7 of the Insolvency Act (11 & 12 Victoria, Cap. 21), any rights of property which an insolvent may have possessed at the date of his petition in insolvency vest in the Official Assignee, and he alone is competent to sue for the purpose of enforcing these rights. *SADODIN v. SPINERS*

[I. L. R., 3 Bom., 437]

6. ————— *Vesting order.—Civil Procedure Code, s. 276.—Attachment before judgment.—Official Assignee's title.*—Where a vesting order has been made under 11 & 12 Victoria, Cap. 21, section 7, after attachment and before decree, the title of the Official Assignee takes effect and prevents the attaching creditor from obtaining satisfaction of his decree by a sale. *Shib Kristo Shaha Chowdhry v. Miller, I. L. R., 10 Cal., 150; and Gamble v. Bholaraj, 2 Bom., 150, followed. SADATAPPA v. PONNAMA* . . . I. L. R., 8 Mad., 554

7. ————— *Personal estate of the insolvent.—Expectant or contingent interest.—Employés.—Deduction from salary for a provident fund and mutual assurance fund.—Right of Official Assignee.*—S., a clerk in the employment of the G. I. P. Railway Company, agreed with the Company that 5 per cent. of his salary should be deducted every month as his contribution or subscription to a fund called the Provident Fund, and a further rate of 1 per cent. as his subscription to another fund called the Mutual Assurance Fund. By the rules of those funds he was entitled to receive back his subscriptions in the event of his dismissal for misconduct. S. became insolvent, and omitted to mention in his schedule the sums standing to his credit in respect of the above two funds. *Held* that these sums were personal estate of the insolvent held by the Company in trust for him, which passed to the Official Assignee under section 7 of Statute 11 & 12 Victoria, Cap. 21, and that they should be entered in his schedule as part of his estate. *IN THE MATTER OF THE PETITION OF SHREWSBURY*

[I. L. R., 10 Bom., 313]

8. ————— *Father's right over immoveable ancestral property.—Insolvency.—Vesting order.—Right of Official Assignee on death of insolvent.*—Under the Mitakshara law a father has the right to dispose of his son's interest in ancestral immoveable estate for the payment of his own debts not contracted for immoral purposes; and a vesting order, made under section 7 of the Insolvent Act, vests that right in the Official Assignee, who can therefore give a good and complete title to such ancestral immoveable estate to a purchaser. The death of the insolvent has no effect on the proceedings in his insolvency, or on the power of the Official Assignee. The ancestral estate previously vested in the Official Assignee is not thereby divested from him and vested in the son by right of survivorship. In the legal aspect of the matter the natural existence of the insolvent is, for the purpose of dealing with his estate, artificially continued in the Official Assignee, who can after the insolvent's death deal

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 7—continued.

with the estate as he could have dealt with it had the insolvent been still alive. *FAKIRCHAND MOTICHAND v. MOTICHAND HURBUCKHAND*

[I. L. R., 7 Bom., 438]

9. ————— *Dismissal of petition, Effect of.—Authority to sue given by Official Assignee.—Payment to insolvent.*—An authority (assuming it to be sufficient) given by the Official Assignee to settle the outstandings of one who has filed a petition of insolvency does not enure after the dismissal of the petition, and cannot entitle the person so authorised to sue at all. The mere fact that a payment was made to a person at a time when his petition was upon the file of the Insolvent Court, which petition was afterwards dismissed, does not invalidate the payment. *RAJKRISTO SINGH v. SEFATOOILLAH* . 7 W. R., 85

10. ————— *Discharge.—Dismissal of petition.—Power to set aside order of dismissal when fraud is shown.*—When an insolvent has obtained his discharge, a Commissioner has no jurisdiction, on the application of some of the creditors, to make an order dismissing his petition, and ordering the estate and effects of the insolvent in the hands of the Official Assignee to be made over to certain persons on behalf of the creditors. The petition being dismissed, the property re-vested in the insolvents. The Court which passed the order dismissing the petition, upon finding such order had been obtained by fraud, has power to set aside the order. *IN THE MATTER OF THE PETITION OF RAM SEBAK MISSEH* . . . 6 B. L. R., 310

11. ————— *Power of Court.—Application to withdraw petition.—Consent of creditor.*—The Insolvent Court has no power to allow an insolvent to withdraw his petition of insolvency, on the ground that he has made a compromise with his creditors. Where, however, the Court is satisfied that all parties concerned desire to take the matter out of the hands of the Court, it will dismiss the petition, even though there is no ground arising out of the facts of the case why the petition should be dismissed. *IN THE MATTER OF PYARI CHAND MITTER* . . . 6 B. L. R., 558

12. ————— *Infant trader.—Withdrawal of petition by infant.—Rule 22, Rules and Orders, Bombay.*—An infant who has traded, but has made no express representation that he is of full age, is not liable to become bankrupt; and although he has filed his petition for the benefit of the Insolvent Act and his schedule, he should be allowed, on proof of his infancy, to withdraw from the proceedings, under the wide powers in this respect given to the Court by Rule 22 of the Rules and Orders, Bombay. *Ex parte Jones, L. R., 18, Ch. D., 109, followed. IN RE HANSRAJ MALGI. EX PARTE DEWAR & Co.* . . . I. L. R., 7 Bom., 411

13. ————— *Infant trader.—Trading contract.—Insolvent Act (11 & 12 Vict., c. 21).*—A minor who has traded cannot be adjudicated an insolvent on the petition of the persons who have

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 7—continued.**

supplied him with funds for the purposes of his business. **IN THE MATTER OF NOBODHEP CHUNDER SHAW** . . . I. L. R., 13 Calc., 68

1. ——— s. 8.—*Annulling fiat of bankruptcy.*—The annulling of the fiat contemplated by the proviso of 11 Victoria, Cap. 21, section 8, applies only to cases in which the original judgment has been the result of mistake of fact, misapprehension, or fraud. **IN RE SHREENARAIN BYRACK** . . . 2 Hyde, 180

2. ——— *Adjudication.—Effect of imprisonment under Civil Procedure Code, 1859, as satisfaction of decrees.*—Held that a judgment-debtor who had been in prison for two years under the Code of Civil Procedure was liable to be adjudicated an insolvent in respect of the same judgment-debt, where the petition for adjudication was presented before he was released from prison under section 278 of the Code. **IN THE MATTER OF RAGUBHAI RAM CHANDRA** . . . 6 Bom., O. C., 86

1. ——— s. 9.—*Revocation of adjudication.—Notice to creditors.—Practice.*—Certain persons had been adjudged insolvents under section 9 of the Insolvent Act, but no schedule had been filed and no claim proved. To an application on behalf of the insolvents after notice to the Official Assignee and to the attorney for the petitioning creditors for an order setting aside the adjudication on the ground that they had come to an agreement with their creditors, it was objected that notice must be given to all the creditors before the adjudication could be annulled. The Court held that the objection must prevail, but refused to make any order. If the adjudication were improper, it could not be set aside: if proper, a schedule must be filed in the usual way. **IN THE MATTER OF RAJNARAYAN PAI**

[13 B. L. R., Ap., 25]

2. ——— *Trader residing out of jurisdiction.—Gomastah.*—A trader residing out of the jurisdiction of the High Court, but carrying on business at Calcutta by a gomastah, can be adjudicated an insolvent under section 9 of 11 & 12 Victoria, Cap. 21, if his gomastah stops payment and closes and leaves his usual place of business, or does any act which, if done by the trader himself, would have rendered him liable to be adjudicated an insolvent. **IN RE HURBUCK CHUND GOLIGRA**

[I. L. R., 5 Calo., 605; 6 C. L. R., 382]

3. ——— *Order of adjudication.—Lying in prison for twenty-one days.—Period within which petition for adjudication to be presented.—Construction.—Effect in an Act of the words "It shall be lawful."*—*Review.—Jurisdiction.*—The Insolvent Act (11 & 12 Victoria, Cap. 21), the ninth section of which empowers a creditor of any person, who shall lie in prison for debt for a period of twenty-one days, to petition the Court to adjudge such person an insolvent, prescribes no limit to the time within which such petition must be presented. It may be presented by the creditor at any time subsequently to the imprisonment. The effect of the words "It shall be lawful" in section 9 of the Insol-

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 9—continued.**

vent Act are imperative, and do not give the Court a discretion in the exercise of which it may refuse an order of adjudication applied for under that section. The Court for the Relief of Insolvent Debtors at Bombay has jurisdiction to review its own orders. **IN THE MATTER OF THUCKER BHAGVANDAS HARJIVAN** . . . I. L. R., 4 Bom., 489

——— s. 13.—*Arrears of maintenance.—"Debt or liability."—Protection order.—Exemption from arrest.*—Arrears of maintenance, included in the schedule filed by an insolvent, are a debt or liability within the meaning of section 13 of the Insolvent Act (11 & 12 Victoria, Cap. 21); and an insolvent who has obtained a protection order is not liable for arrest or imprisonment in respect of such arrears. *Quære.*—Whether the protection order protects the insolvent from proceedings in respect of any maintenance accruing subsequently to the filing of the schedule. **IN THE MATTER OF TOKER BIBER v. ABDUL KHAN**

[I. L. R., 5 Calo., 536; 5 C. L. R., 458]

1. ——— s. 19.—*Rule 14 of Insolvent Court.—Official Assignee.—Commission.*—The right of the Official Assignee to commission under 11 & 12 Victoria, Cap. 21, section 19, does not arise until there are in his hands funds realised and available for distribution among the creditors. If at such time the adjudication is annulled, the right to commission subsists. **OFFICIAL ASSIGNEE v. RAMALINGA**

[I. L. R., 8 Mad., 79]

2. ——— *Interest on scheduled debts.—Official Assignee's commission on interest.*—Where an insolvent's estate is sufficient to pay off his creditors in full, leaving a balance in the hands of the Official Assignee, the Court will direct interest at 6 per cent. to be paid on such proved or admitted contract debts as expressly or impliedly carry interest as from the date of the filing of the petition in insolvency; and will allow the Official Assignee to retain his commission on such sum so paid as interest, directing any balance that may then remain in his hands to be made over to the insolvent. **IN RE MAHOMED MAHMUD SHAH** . I. L. R., 13 Calo., 66

s. 22.

Sec s. 7 5 B. L. R., 309

ss. 23 and 24.

Sec CASES UNDER INSOLVENCY—ORDER AND DISPOSITION.

Sec CASES UNDER INSOLVENCY—VOLUNTARY CONVEYANCES.

1. ——— s. 26.—*Right of owner to sue Assignee.—Per PRACOCK, C. J., and MARKBY, J.*—An order under section 26 of the Insolvent Act does not prevent the owner of the property which is the subject of the order from suing the Assignee to establish his right to it. **BARLOW v. COCHRANE**

[2 B. L. R., O. C., 56]

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 26—continued.

2. ————— *Jurisdiction of Insolvent Court.*—*Order to deliver property to the Official Assignee.*—The Insolvent Court has a discretionary power, under section 26 of the Insolvent Act, to order any person who has the possession of, or has under his power or control, any property of the insolvent, to deliver over such property to the Official Assignee. *IN RE DWARKANATH MITTER. RATANMANI DAS v. MILLER* . . . 4 B. L. R., O. C., 68 [15 W. R., O. C., 18, note

3. ————— *Jurisdiction.*—*Per NORMAN, J. (PAUL, J., dissenting).*—The Insolvent Court has power, under section 26 of 11 & 12 Victoria, Cap. 21, to order any person who is in possession of, or has under his control, any property alleged to belong to the insolvent, to deliver such property to the Official Assignee. *IN THE MATTER OF ADJUDHIA PRASAD. JAIRAM GIE v. MILLER* [7 B. L. R., 74: 15 W. R., O. C., 16

4. ————— *Question of disputed title.*—*Voluntary conveyances.*—*Statute 13 Eliz., c. 5.*—Where an order had been made under section 26 of the Insolvent Act calling on a certain person to show cause why she should not hand over to the Official Assignee money which it was alleged the insolvent had paid to her shortly before his insolvency under circumstances which might make the transaction void against the creditors, *Held*, in the Court below, that the transaction was a gift, and, under the circumstances, void as against the creditors within the Statute 13 Elizabeth, Cap. 5. *Held*, also, that the word "property" in section 26 of the Insolvent Act includes money. *Held*, on appeal, that the matter was not one which could properly be dealt with under the 26th section of the Insolvent Act, as it involved difficult questions of title. *IN THE MATTER OF UMBIOA NUNDUN BISWAS*

[I. L. R., 3 Calc., 434: 1 C. L. R., 561

1. ————— s. 29.—*Suit by Official Assignee.*—*Leave of Court to sue.*—*Leave nunc pro tunc.*—*Costs.*—*Practice.*—To an action brought, prosecuted, or defended by the Official Assignee, it cannot be objected that such action was brought, prosecuted, or defended without leave first obtained from the Court. Should, however, the Official Assignee bring, prosecute, or defend any such action without leave first obtained from the Court, he will do so at his own risk in regard to the matter of costs. Leave should be obtained before suing: it cannot be granted in the course of the suit *nunc pro tunc*. *COCHRANE v. OWEN* . . . 2 Hyde, 150

2. ————— *Suit by Official Assignee.*—*Leave to sue.*—*Practice.*—It is not necessary for the Assignee to obtain the leave of the Court before commencing an action; the absence of such permission is matter of objection only between the Assignee and the Court of Bankruptcy, and not between the Assignee and the other party to the suit. *IN RE LATAPIN* . . . Cor., 4

————— s. 32.—*Arrangement for cultivation of indigo and management of factories for*

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 32—continued.

benefit of creditors.—*T. & Co.*, a firm in Calcutta, the mortgagees of certain indigo factories and crops, mortgaged them to the A. Bank, the Bank stipulating to make advances for the cultivation and manufacture of the indigo in consideration of the mortgage. *T. & Co.* became insolvent, and the Bank went into liquidation and a provisional liquidator was appointed. On application by the Official Assignee to the Court to allow S., a leading merchant in Calcutta, to carry on the cultivation and manufacture, on the ground that the whole crop would otherwise be lost to the creditors, *Held* that the Court would grant the application, and, in exercise of the power given by section 32 of the Insolvent Act, would order the indigo factories not to be sold until further notice, and allow the Official Assignee to make such an arrangement as being one by which the interests of the creditors would be best consulted; the right to hold the produce of the factories to be to such extent only as the interest in them which belonged to the insolvents, and was vested in the Official Assignee, enabled him to give. *IN THE MATTER OF THOMAS & Co.*

[1 Ind. Jur., N. S., 352

1. ————— s. 36.—*Practice.*—*Counsel.*—A person from whom property is sought to be taken under section 36 of 11 & 12 Victoria, Cap. 21, is entitled to be represented by counsel. *IN THE MATTER OF NOLITMOHUN DOSS* . 11 B. L. R., Ap., 33

2. ————— *Practice.*—*Right of witness summoned under s. 36 to appear by counsel.*—A witness summoned for examination under section 36 of the Insolvent Act is not entitled, as of right, to be represented by counsel. The attendance of counsel on his behalf is a matter of practice to be settled by the Judge at his discretion. *IN THE MATTER OF THE PETITION OF NURSRY KESOWJI* [I. L. R., 3 Bom., 270

3. ————— *Summons to insolvent and creditors.*—*Practice.*—An application for a summons to insolvent and the petitioning creditors to be examined with reference to the debt on which the insolvency had been adjudicated should be made to the Commissioner. *IN RE KHODA BUX* [1 Ind. Jur., N. S., 42

4. ————— *Fresh petition.*—*Practice.*—*Rule 14 of Insolvent Rules, Bombay.*—*Held* that Rule 14 of the Insolvent Court at Bombay, requiring a special application on affidavit and notice to opposing creditors before a fresh petition can be filed, has reference to a dismissal upon hearing, and not to the case of a petition dismissed under Rule 10. *IN RE MANEKJI FRAMJI* . . . 3 Bom., O. C., 167

5. ————— *Adjournment.*—*Illness of insolvent.*—*Protection order.*—An adjournment on the ground that the insolvent is unable to attend the Court by reason of ill-health will only be granted when the insolvent enjoys the benefit of the Court's order granting him personal protection. *IN RE ODGYTOO CHURN ROY* . . . Bourke, Ins., 3

6. ————— *Death of insolvent.*—*Abatement.*—*Effect of death on vesting order.*—The death

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 36—continued.**

of an insolvent before obtaining his discharge does not affect the right of the Official Assignee to deal with the property of such insolvent, nor does it cause the proceedings in such insolvency, so far as the Official Assignee and the creditors are concerned, to abate. *IN RE SITARAM ABBASI. EX PARTE SUNDAR-DAS MULJI* 10 Bom., 58

7. ——— Abatement of suit.—Death of party instituting proceedings.—Representative.—Proceedings in the Insolvent Court do not necessarily abate by the death of the party who institutes such proceedings. There is nothing in the Insolvent Act, or in the Rules of the Court, which prevents the Commissioner from allowing the proceedings to be carried on by the representative of such deceased party, he being interested in them. *IN THE MATTER OF RAM SREK MISSEK. PALTU v. JANXI PRASAD. RAMZAN ALI v. JANXI PRASAD* . 6 B. L. R., 119

8. ——— Rules of Insolvent Court.—Rule 25.—Leave to defend suit without fees.—Leave granted to the Official Assignee under Rule 25 of the Rules of the Insolvent Court to defend a suit without paying Court fees. *HIRALAL SEAL v. SCHILLER* [7 B. L. R., Ap., 61

9. ——— Final discharge where insolvent is not personally present in Court.—Affidavit explaining absence.—Opposition to final discharge.—An insolvent who has obtained a rule nisi for his final discharge, but who is not personally present in Court on the return of the rule, is entitled, where no one appears to oppose the rule, to have the rule made absolute on his putting in a sufficient affidavit explaining his absence. *IN RE FOX* [I. L. R., 13 Calc., 67

s. 39.

See SET-OFF—SET-OFF ALLOWED.

[6 C. L. R., 294

1. ——— s. 40.—Assignment to trustees for benefit of creditors.—Notice to creditors to register claims.—Refusal of trustees to register claim preferred after time.—Cause of action.—The creditor of an insolvent, who had assigned all his property to trustees for the benefit of all his creditors generally, sued him for his debt, joining the trustees as defendants on the ground that they had refused to register his claim. The trustees had refused to register the claim on the ground that the plaintiff had not applied for its registration within the time notified by them, and that he would not consent to abide by the order which the High Court might make on an application by the trustees for its advice regarding the claims of creditors who, like the plaintiff, had applied for the registration of their claims after such time, but before the assets of the insolvent had been distributed. The deed of trust empowered the trustees to distribute the assets of the insolvent after a certain time among the creditors who had preferred their claims within that time, and declared that they should not be liable for such distribution to creditors who had not preferred their claims within that time; but it did not empower them to refuse to register claims made after that time

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 40—continued.**

but before distribution of the assets. *Held* that the refusal of the trustees to register the plaintiff's claim gave him a cause of action against them; and that, inasmuch as the plaintiff had applied for the registration of his claim before the distribution of the assets, the trustees had improperly refused to register it. *AJUDHIA NATH v. ANANT DAS* [I. L. R., 3 All., 799

2. ——— Proof of claim.—Dividend already declared.—A claim was made against the estate of an insolvent in respect of certain bills of exchange on which dividends had been declared in favour of the present claimant by the Official Assignee on the estates of two other insolvents, but which bills of exchange were also included in the present claim. *Held* that the dividends declared on the two other insolvencies must be deducted from the amount of the claim, though no payment in respect of the dividends declared had been actually made. *IN THE MATTER OF PARKER PITTAR* 8 B. L. R., 118

3. ——— Proof of claim.—Giving up security.—Realisation of security.—In 1870 the firm of *S. M. & Co.*, of Calcutta, authorised *A.*, of the firm of *C. N. & Co.*, also of Calcutta, to indent for them for iron from England. In pursuance of such authority, *C. N. & Co.* ordered, through their London agents, *P. P. & Co.*, a shipment of iron, which was duly shipped by *P. P. & Co.*, who drew against the said shipment two bills of exchange for Rs10,000 and Rs1,484-10, respectively, on the firm of *S. M. & Co.*, in favour of *C. N. & Co.* The bills, on presentation, were duly accepted by *S. M. & Co.*, and afterwards discounted by *C. N. & Co.* with the Chartered Mercantile Bank, *C. N. & Co.* at the same time depositing with the bank, as collateral security for the payment of the bills, the bill of lading for the iron shipped from England by *P. P. & Co.* Subsequently both *S. M. & Co.* and *C. N. & Co.* filed their petitions in the Insolvent Court, and were adjudicated insolvents. In the schedule of *S. M. & Co.* the bank was inserted as a creditor in respect of this transaction for Rs11,484-10. When the bills of exchange became due, they were duly presented for payment to the acceptors, but were dishonoured and protested by the bank for non-payment, and on such non-payment the bank sold the shipment of iron for which it held the bills of lading, and realised the sum of Rs10,073-12-6. The bank claimed to prove for the whole amount in the schedule against the estate of *S. M. & Co.* *Held* that the bank was only entitled to prove for so much as was due to it on the bills of exchange after deducting the amount realised by the sale of the iron. In the circumstances of the case, *C. N. & Co.* were interested in the shipment of iron as well as *S. M. & Co.*, and therefore there was no obligation on the bank to give up the security before proving its claim, but it might have proved for the whole amount of the debt and retained the security. *IN THE MATTER OF SHIB CHANDRA MULLICK* . 8 B. L. R., 30

4. ——— 32 & 33 Vict., c. 71 (The Bankruptcy Act, 1869).—Proof of claim.—Breach of contract.—Unliquidated damages.—A claim for

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 40—continued.**

unliquidated damages arising out of a breach of contract was allowed to be proved in the Insolvent Court under section 40, Insolvent Act. *See*,—The provisions of the English Bankruptcy Act with regard to such claims apply to India. **IN THE MATTER OF OMBETOLALL DAW . . . 13 B. L. R., Ap., 2**

5. ———— Proof of debts.—Trust property.—As the Insolvent Act, by virtue of the terms of section 40, incorporates all existing and future enactments passed in England for the purpose of determining what debts may be proved; and as by section 15 of the English Act of 1869 property held by the bankrupt in trust for others is not the property of the bankrupt divisible among his creditors, such property cannot be regarded as having vested in the Official Assignee, and a *cestui que trust* creditor is not entitled to come in and prove; because what is being administered in insolvency is the insolvent's estate, of which property of this nature does not form part. **IN THE MATTER OF VARDALACA CHARRI [I. L. R., 2 Mad., 15**

6. ———— Proof of claim.—On the 25th June 1874, *A.*, the father of *B.*, having mortgaged the factory *X.* to *S. & Co.*, to secure repayment of Rs12,000 advanced, died on the 7th September 1874, leaving a will whereby he appointed his wife *C.* sole executrix and devised to her factory *X.* On the 16th September 1876 another mortgage was executed whereby *C.* further charged factory *X.* with the repayment of further advances, and *B.* mortgaged factory *Y.* as a further security, the mortgage containing a stipulation for repayment, within one month after notice, of the balance due in excess of Rs12,000. *B.* became insolvent in July 1882. No demand was made. On the 5th January 1877 a balance of Rs27,552 remained due, which, with interest up to July 1882, was increased to Rs42,564. The liquidators of *S. & Co.*, who had in the meantime dissolved partnership, sought to prove against *B.*'s estate for Rs30,564 after deducting the Rs12,000 advanced to *A.* *Held* that the liquidators (if entitled to prove at all) could only prove for the difference between the sum of Rs30,564 and the value of the mortgage security after realising or giving credit for the value of the first security. **IN THE MATTER OF AGABEG . . . 12 C. L. R., 165**

7. ———— Sale of mortgaged property.—*52 & 53 Vict., c. 71 (The Bankruptcy Act, 1889).—Rules 78 to 81.*—The insolvents filed their petition on 17th March 1873, and obtained their final discharge on 2nd September 1873. After their discharge a creditor, to whom they had mortgaged certain property, made an application for the sale of the mortgaged properties, and the petitioner prayed for an order for an account of what was due on the mortgage, and for a sale under the conduct of the Official Assignee; that he should be at liberty to bid and set off the amount of the purchase against the sum due to him; that if any other person became the purchaser, the proceeds should be paid to him in liquidation of his debt, and that, after crediting that amount, the applicant might rank as a creditor to the estate for any remaining balance. The Court

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 40—continued.**

ordered the sale to be made as prayed in the petition, the Official Assignee to reserve a price on the property, and duly advertise it for sale; if not sold by public auction, application should be made to the Court by the Official Assignee for leave to sell by private contract. **IN THE MATTER OF HOWARD BROTHERS . . . 13 B. L. R., Ap., 9**

8. ———— Distribution of assets.—Creditor taking benefit of property which does not pass to Assignee.—The principle that one creditor shall not take a part of the fund which otherwise would have been available for the payment of all the creditors, and at the same time be allowed to come in *pari passu* with the other creditors for satisfaction out of the remainder of that fund, does not apply where that creditor obtains by his diligence something which did not, and could not, form a part of the fund. **COCKERELL v. DICKENS . . . 2 Moore's L. A., 363**

9. ———— Surplus after paying creditors in full.—Interest on debts.—Nature of debts on which interest is payable.—If the estate is more than sufficient to pay the creditors twenty shillings in the pound, the surplus is to be applied to the payment of interest on debts bearing interest by contract. The debts on which interest ought to be allowed to creditors out of a surplus remaining in the Official Assignee's hands, after payment of the scheduled amount of debts, are such only as bear interest by the contract of the parties, either express or implied; not upon judgments or any other debts with respect to which interest could only be recovered *quid damages*. **IN THE MATTER OF MACCLEAN [1 Mad., 220, note**

s. 42.—Preferential claims.—Costs.—European assistants and native workmen of insolvent firm.—The application for payment under section 42 of the Insolvent Act must be taken to imply consent to a dissolution of the contract of service by the filing of the petition. Claims, therefore, by servants of an insolvent firm only allowed up to date of insolvency, not to the end of the month. Claim of servant who had left insolvent's service before date of insolvency allowed, but only for so much as accrued due to him within the six months previous to insolvency. Sum agreed to be paid to an assistant as extra salary or remuneration for making up insolvent's statement to be laid before the creditors, disallowed. Costs of the applications allowed out of the estate. One claimant was manager of the insolvents' business at Simla on a salary of Rs350 per month, up to 11th April 1867, when one of the partners wrote to him, promising him commission to make his salary up to Rs500. During the six months previous to the insolvency he had received Rs3,100, being more than the salary claimed for six months. Claim disallowed. **IN THE MATTER OF PARKER PITTAR & Co. [6 B. L. R., Ap., 144**

s. 46.—Winding up of company.—Payment of servants' salaries.—Companies Act, 1866, s. 178.—Under section 46 of the Insolvent Act the Court on the failure of a bank ordered the salaries of the employees of the bank to be paid, the payment

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 46—continued.**

to be confined to the salary already earned at the date of failure of the bank. The Court refused a more extended application for six months' salary in lieu of notice and the amount payable to them under their agreements as passage-money and expenses of passage, which it was contended could be granted under Section 178 of the Companies Act. In **THE MATTER OF THE COMPANIES ACT, 1866, AND OF THE AGRA AND MASTERMAN'S BANK**

[1 Ind. Jur., N. S., 350, 352]

But see **IN THE MATTER OF THE CALCUTTA STEAM TUG ASSOCIATION** . 2 Ind. Jur., N. S., 17

— s. 47.

See s. 50 . . . 5 Bom., O. C., 61

See s. 51 . . . I. L. R., 6 Cal., 70
[I. L. R., 8 Mad., 97]

See s. 60 . . . 8 Bom., O. C., 37
[9 Bom., 1

— *Personal discharge.*—*Liability of insolvent to pay subsequent calls.*—*Winding up of company.*—*Companies Act, 1866, ss. 98, 100.*—An insolvent, a holder of shares in a joint-stock company, on the 21st of May 1866, obtained his personal discharge under section 47 of the Insolvent Debtors Act, but his name still continued on the register of the company, the Official Assignee not having elected to take the shares. The company was subsequently (on the 13th of April 1867) ordered to be wound up. *Held* that the insolvent's liability to pay calls on the shares still continued, notwithstanding his personal discharge. In **RE MERCANTILE CREDIT AND FINANCIAL ASSOCIATION, DAMASKAR'S CASE** . . . 8 Bom., O. C., 117

— s. 49.

See **CIVIL PROCEDURE CODE, 1882, s. 244**
—PARTIES TO SUIT.

[I. L. R., 7 All., 752]

— *Right of Official Assignee to be made party to, or apply in, a suit against insolvent pending vesting order.*—*Letters Patent, cl. 17.*—The Official Assignee has no legal right under the Insolvent Act to apply to be made a party to suits against the insolvent pending at the time of a vesting order being made, nor has he the power, after judgment and decree have been pronounced in a suit against the insolvent prior to his vesting order, to get himself made a party to such suit with a view of setting aside the judgment or appealing therefrom. By section 17 of the Letters Patent constituting the High Court, the practice of the Insolvent Court (where any such practice is specifically pointed out by the Insolvent Act or the rules framed under it) is not affected by the amalgamation of the Courts; and under section 49 of the Insolvent Act, the Official Assignee, after schedule filed and before the discharge of the insolvent, may apply to any Court in which a suit is brought against the insolvent for any debt or demand admitted in the schedule, or disputed as to amount only, for a stay of process or execution; but where no schedule has been filed, the Official Assignee cannot

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 49—continued.**

adopt that course. In **RE HUNT, MONNET, & Co.**
EX PARTE GAMBLE v. BHOLAGIE MANGIR

[1 Bom., 251]

1. — s. 50.—*Fraudulent practice in trade.*—*Power of Court to punish criminally.*—Certificate refused where insolvent had been guilty of fraudulent practices in trade. Certificate suspended in the case of a partner at home who, though innocent of the fraudulent practices, omitted to give notice to the parties intended to be defrauded. The Insolvency Court has no power to punish criminally for fraudulent practices in trade. This is left to the action of creditors through the channel of the criminal law. In **RE JANSSEN v. REUSS** . . . Cor., 18

2. — s. 50 and s. 47.—*Power of Commissioner.*—*Adjournment of petition till expiration of imprisonment.*—A Commissioner sitting in Insolvency, while sentencing an insolvent to imprisonment on the criminal side, under section 50 of the Insolvent Debtors Act, has power, in addition, to order that the further hearing of the insolvent's petition be adjourned, with or without protection, under section 47, beyond the expiration of such term of imprisonment. In **RE MANIKJI SHAPURJI KAKA**
[5 Bom., O. C., 61]

1. — s. 51.—*Expectation of paying debts.*—*Ground for deferring personal discharge.*—The words in section 51 of the Insolvent Act relating to debts contracted—"without having any reasonable or probable expectation at the time when contracted of paying them"—are pointed, not at the case of a man who incurs a debt knowing that he cannot pay his debts generally, but at that of a man who incurs a debt knowing that he cannot repay that debt. The words in the same section—"if it shall appear that the insolvent's whole debts so greatly exceeded his means of providing for the payment thereof during the time when the same were in course of being contracted, reference being had to his actual and expected property as to show gross misconduct in contracting the same"—apply not to this or that debt, or class of debts, but to all the debts contracted for some years past; and under the circumstances of the case afford ground not for excepting any specified debt under section 51, but for deferring the discharge under section 47. In **THE MATTER OF THE PETITION OF COWIE**

[I. L. R., 6 Cal., 70; 7 C. L. R., 19]

2. — *Trading in reckless manner.*—Reckless trading, although unaccompanied by any legal or moral fraud, is a ground for suspending protection. In **RE BAGGOT** . Bourke, Ins., 5

3. — *Discharge of insolvent after imprisonment.*—*Execution of decrees by arrest of insolvent.*—Where, under section 51 of the Insolvent Debtors Act (11 & 12 Victoria, Cap. 21), it has been adjudged that an insolvent shall be forthwith discharged from all his debts, &c., except as to certain specified debts, and as to these that he shall be discharged so soon as he shall have been in custody, at the suit of the person or persons who shall be creditor

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 51—continued.**

or creditors for the same respectively, for such period as the Court shall direct; such an order of adjudication does not in itself operate as an order for the imprisonment of the insolvent, but the detaining creditor, if he wishes to arrest or detain the insolvent for such period, must (if he have not already done so) place himself in a position to issue execution against the insolvent. **IN RE MANOHARJI HIRJI READYMONEY**

[5 Bom., O. C., 55

4. ——— **s. 51 and s. 47.—Discharge except as to one debt.—Committal on one debt to prison.**—By an order made under the provisions of 11 & 12 Victoria, Cap. 21, it was directed that an insolvent debtor was entitled to his discharge as to all the debts mentioned in his schedule, save and except the debt due to a certain creditor, and as to such debt that the insolvent should be entitled to be discharged as soon as he had been in custody at the suit of the creditor for six months, and it was further ordered that the insolvent be committed to custody in respect of this debt for six months.—*Held* that the order of committal was within the power given to the Court by sections 47 and 51 of 11 & 12 Victoria, Cap. 21. **NIXON v. CHARTERED MERCANTILE BANK**

[I. L. R., 8 Mad., 97

———— **s. 59 and s. 7.—Order of discharge, Effect of.—Interest received after order of discharge by Official Assignee.**—Under a vesting order an insolvent's estate became vested in the Official Assignee, who paid the scheduled creditors the principal of their debts. A discharging order was then made under section 59 of the Insolvent Debtors Act (11 Victoria, Cap. 21). At the date of such order the Official Assignee had R143-1-8 to the credit of the insolvent's estate. He subsequently received the interest on certain securities which had been bequeathed to the insolvent for his life before the date of the vesting order. *Held* that the discharging order did not make the vesting order void; nor as regarded the estate vested in the Official Assignee did it re-vest immediately the right of property in the insolvent: that creditors are entitled to interest-carrying debts out of a surplus remaining in the Official Assignee's hands after payment of the scheduled amount of debts: that, notwithstanding the discharging order, the Court might direct the R143-1-8, and the interest subsequently received, to be paid to the insolvent's creditors rateably in respect of interest on their debts calculated down to the date of the discharging order, and that the balance should be paid to the insolvent or his representative: that the interest subsequently received by the Official Assignee was "neither after-acquired property" within the meaning of section 59, nor "a debt growing due to the insolvent before the Court shall have made its order" within the meaning of section 7 of 11 Victoria, Cap. 21. **IN THE MATTER OF PEREIRA**

IN THE MATTER OF MACLEAN

[1 Mad., 220, note

1. ——— **s. 60.—Trader.—Discharge.—Subsequent suit for debt not entered in schedule.**—Defendant, who had taken the benefit of the Insolvent

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 60—continued.**

Act, was sued by plaintiff for a debt contracted previously to his insolvency, the debt not having been entered in the insolvent's schedule at the time of his final discharge. *Held*, insolvent being a trader, that, under the provisions of section 60 of the Insolvency Act, taken in connection with 5 & 6 Victoria, Cap. 122, the discharge was good and valid, and that subsequently-acquired property could not be attached for any debt discharged under the insolvency. **BRETT v. SCHONKESTEDT** . . . 2 Hyde, 1

2. ——— **Trader.—Mukadam.**—A mukadam is not a trader within the meaning of the Insolvent Act, 11 & 12 Victoria, Cap. 21, and is not therefore entitled to obtain a discharge, in the nature of a certificate, under section 60 of that Act. **IN THE MATTER OF COWASJI EDALJI**

[I. L. R., 5 Bom., 1

3. ——— **Agent of Company paid by commission.—Trader.—Broker.**—The agent of a company or private individual who procures and receives parcels for transmission by his employers, or who by his personal exertions obtains passengers for their dak, although he may be entrusted with the receipt or price of carriage, and is paid by commission, is not a broker or trader within the meaning of the Insolvent Act. **IN RE CAMPBELL** . 2 Hyde, 177

4. ——— **Order of discharge on debts not in schedule.**—The order of discharge of an insolvent trader, under section 60 of the Insolvent Debtors Act, operates to discharge such trader from all debts that could be proved in the matter of his insolvency, whether they are specified in his schedule or not. **DADABHAI NARAYANJI v. MANTUJI SHAPURJI KAKA** . . . 7 Bom., O. C., 22

5. ——— **Effect of final discharge.—Bankruptcy Act, 1861.—Premia on policy of insurance.**—An insolvent obtained his final discharge in April 1863. *Held* that he was not still liable, under the provisions of the English Bankrupt Act, 1861, section 154, for the ascertained value of certain premia on a policy of insurance which he had undertaken. **GRAY v. CHICK** . . . Cor., 136

6. ——— **Company.—Winding up.—Suit against contributory on the B list.—Notice.—Plea of discharge in insolvency.—Foreign judgment.—Plea in suit on a foreign judgment.—Balance order.—English Companies Act, 1862.**—The plaintiffs, who were an English joint-stock company registered under the English Companies Act of 1862, sued the defendant as a past member of the bank, upon a balance order of the High Court of Justice in England dated 24th February 1881, to recover the sum of £678-8. The balance order recited that it was made upon the application of the official liquidator of the bank, and that there had been no appearance on behalf of the contributories. The defendant pleaded that he had not received notice that his name was about to be placed on the list of contributories, or notice of the application of the official liquidator recited in the balance order, and he contended that he was not bound by, or liable under, that order. He

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 60—continued.**

further pleaded (and it was admitted) that the order for winding up the plaintiffs' bank was in July 1866; that he had filed his petition in insolvency on 19th November 1866, and had obtained his discharge under section 60 of the Insolvent Act (Statute 11 & 12 Victoria, Cap. 21) on the 30th September 1867; and he contended that by that order he was discharged from liability. *Held*, upon the evidence, that service upon the defendant of the various notices was sufficiently proved. *Held*, also, that although the defendant's insolvency and his discharge under section 60 of the Insolvent Act, which was subsequent to the order for the winding up of the bank, might have absolved him from further liability to the plaintiffs, and, if pleaded in the Court in England, might have prevented his being placed on the list of contributories, yet that the Court could not, in this suit, give effect to the defendant's discharge. The present suit was a suit upon a foreign judgment, and the defendant could not now be permitted to plead a defence which he had an opportunity of pleading in the foreign Court. **LONDON, BOMBAY, AND MEDITERRANEAN BANK v. BURJORJI SORABJI LYWATTA**

[I. L. R., 9 Bom., 346]

See **LONDON, BOMBAY, AND MEDITERRANEAN BANK, v. HORMASJI PESTANJI**

[8 Bom., O. C., 200]

7. — **s. 60 and s. 47.—Final discharge.—Rights of opposing creditor.—Grounds of opposition where personal discharge has been granted without opposition.**—An opposing creditor who has not filed grounds of opposition to or opposed the personal discharge (under section 47 of the Insolvent Debtors Act) of an insolvent trader, can nevertheless come in and oppose the insolvent trader's application for his final discharge under section 60 of the Act. The grounds of such opposition may include matters which might have been put forward as grounds for opposing the insolvent trader's personal discharge under section 47 of the Act, and need not necessarily be confined to matters either not known at, or that have occurred since, the time of the personal discharge being granted. The Court, in considering whether it will grant or refuse to an insolvent trader his final discharge, will take into consideration the whole course of the mercantile dealings of the insolvent trader, and will not confine itself to his conduct with reference to the opposing creditor merely. **IN RE PESTANJI SHAPURJI KAKA**

[8 Bom., O. C., 37]

8. — **s. 60 and ss. 47 & 50.—Personal discharge.—Subsequent enquiry before final discharge.**—An insolvent, whose personal discharge has been opposed under section 47 of the Insolvent Act, can be again opposed by the same creditor, and on the same grounds, when he applies for an absolute discharge under section 60. The order made on the hearing of the petition under section 47 of the Act can be used as evidence against the insolvent when applying for his discharge under section 60, provided that such order clearly states the offences established against the insolvent. An insolvent by being punished under section 50 of the Act does not thereby cease

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 60—continued.**

to be liable in respect of such offences when he applies for his discharge under the 60th section. The discharge under section 60 of an insolvent who has already obtained his discharge under section 47 is not as of course, but will depend upon the general conduct of the insolvent both before and subsequent to his obtaining his discharge under section 47. **IN RE COORLAWALLA** . . . 9 Bom., 1

— **ss. 60 & 61.**See **COMPANY—WINDING UP—GENERAL CASES** . . . I. L. R., 10 Bom., 582

— **s. 62.—Crown-debt.—Judgment-debt in name of Secretary of State for India in Council.**—A judgment-debt due to the Secretary of State for India in Council, arising out of transactions at a public sale of opium held by the Secretary of State for India in Council, is a debt in respect of Crown property, and therefore a "debt due to our Sovereign lady the Queen" within the meaning of section 62 of the Insolvent Act. In determining whether or no a debt falls under the denomination of a Crown-debt, the question is not in whose name the debt stands, but whether the debt, when recovered, falls into the coffers of the State. Principle in *Secretary of State for India in Council v. The Bombay Landing and Shipping Company*, 5 Bom. O. C., 23, followed. **JUDAH v. SECRETARY OF STATE FOR INDIA IN COUNCIL** . . . I. L. R., 12 Calc., 445

1. — **ss. 72, 73.—Evidence not in writing.—Appeal.**—Where the evidence has not been taken down in writing as provided by section 72 of the Insolvent Act, the evidence cannot be gone into on appeal under section 73. **IN THE MATTER OF ADJUDHIA PRASAD. JAIRAM GIR v. MILLER**
[7 B. L. R., 74: 15 W. R., O. C., 16]

2. — **Appeal.—Mode of computation of time for appeal.—Vacation.**—In order to enable an insolvent to appeal from an order passed in the matter of his petition, notes of the evidence must be taken at the hearing by an officer of the Court. In the time allowed for appealing, the vacation is to be computed, unless such time expire during the vacation, in which case the petition of appeal must be presented to the Court or a Judge on the first day after the vacation. **IN RE LAKHMIDAS HANSRAJ**
[5 Bom., O. C., 63]

3. — **Appeal.—Evidence, Mode of recording.**—In order to enable the High Court to hear the appeal of an opposing creditor from an order made upon the hearing of an insolvent's petition which such creditor opposes (and upon which evidence is taken), it is necessary that notes of all the evidence at the hearings should be recorded by an officer of the Insolvent Court. *In re Lakhmidas Hansraj*, 5 Bom., O. C., 63, in substance followed. **KALLANDAS KIRPARAM v. TRIKAMLAL GULABRAI** . . . 9 Bom., 307

1. — **s. 73.—Appeal.—Power of Commissioner.**—A Commissioner has no power, under section 73 of the Insolvent Act, to extend the time

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 73—continued.**

for presenting a petition of appeal from an order of the Insolvent Court. *IN RE GHOLAM RASUL KHAN* [1 B. L. R., O. C., 130]

2. ————— Power of Commissioner.—Attachment of property, Application for.—The gomastah of an insolvent claimed to retain certain property as against the insolvent, and disobeyed an order of Court that he should make over the property to the Official Assignee, whereupon an order of attachment was made absolute against him. Before such order was made absolute, the gomastah and another person had obtained a money-decree against one *R. Held*, the Commissioner had no powers except those conferred by the Act, and therefore could not grant an application by the Official Assignee that half the amount of the decree still in the hands of *R.* should be attached and brought into Court. *IN RE KHETTESY DAS* 3 B. L. R., Ap., 14

3. ————— Civil Procedure Code, s. 342.—Appeal from Commissioner of Insolvent Court.—Security for costs.—Section 342 of Act VIII of 1859 did not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. The right of appeal is given by section 73 of the Insolvent Act, and the Court cannot impose on the appellant a condition that he shall give security for the costs of such an appeal. *IN THE MATTER OF RAM SEBAK MISSEB* . 5 B. L. R., 179

4. ————— Security for costs.—Non-appearance of insolvent.—On an application for deposit of security for costs in an appeal by an insolvent under section 73 of the Insolvent Act, in a case where the insolvent had been sentenced to imprisonment under section 50 of the Act, and it was shown that he had absconded, the Court declined to make any order for security for costs, but refused to hear the appeal unless the insolvent was present. *IN THE MATTER OF GHASSEERAM* . 15 B. L. R., Ap., 10

5. ————— Opposing creditor taken by surprise.—Discharge.—Power of Commissioner to set aside discharge.—Where an opposing creditor being, without any default on his part, misled as to the time when an insolvent's petition was to come on for hearing, failed to appear when the petition was called on, and the insolvent obtained his discharge *ex parte*, the Appellate Court, on the ground that the opposing creditor had been taken by surprise, set aside the order of discharge and restored the case to the board. *Semble*,—That, under the circumstances, the Commissioner sitting in insolvency had no jurisdiction to set aside the order of discharge. *DWARKADAS LALUBHAI v. BLACKWELL* 9 Bom., 319

6. ————— Appeal.—Procedure.—Form of petition of appeal.—Civil Procedure Code, s. 590.—The procedure as to appeals from orders under the Civil Procedure Code, 1882, is not made applicable by section 590 to appeals from orders under the Insolvent Act. No particular form is prescribed for petitions of appeal under the latter Act. In this case the so-called memorandum of appeal was held to be

**INSOLVENT ACT (11 & 12 Vict., c. 21),
s. 73—continued.**

a good petition of appeal under the Act. *IN THE MATTER OF BROWN (CLAIM OF DWARKA NATH MITTER)* I. L. R., 12 Calc., 629

1. ————— s. 86.—Entering up judgment against insolvent for non-appearance.—The insolvent not appearing when his petition came on for hearing, an order was made, on the application of the Official Assignee, that the insolvent should attend on a day fixed for the purpose of being examined: the order to be served on him in the meantime. On the day fixed he did not appear, and an application was granted that judgment should be entered up against him under section 86 of the Insolvent Act. That section was not repealed by Act XIV of 1870. *IN THE MATTER OF COSTELLO* . . . 8 B. L. R., Ap., 57

2. ————— Judgment entered up under s. 86 of the Insolvent Act (11 & 12 Vict., c. 21).—Execution.—Practice.—Procedure.—Civil Procedure Code, 1882, ss. 638, 649.—A judgment entered up under section 86 of the Insolvent Act (11 & 12 Victoria, Cap. 21) is a judgment of the High Court, and must be executed under the provisions of the Civil Procedure Code. *IN RE BHAGWANDAS HURJIVAN* I. L. R., 8 Bom., 511

3. ————— Absent and absconding insolvent, Entering up judgment against.—Where an insolvent, who had not received his discharge, left the jurisdiction of the Court pending the further hearing of his petition for the benefit of the Act for the Relief of Insolvent Debtors, and there was reason to believe that he would not return to the jurisdiction, the Court ordered judgment to be entered up under section 86 of the Act for the amount of the debts appearing in his schedule. *IN THE MATTER OF ENGLISH* 7 C. L. R., 378

INSPECTION OF DOCUMENTS.

1. ————— Time for ordering defendant to furnish list of documents.—The Court will not order a defendant to furnish the plaintiff with a list of documents till after the plaintiff shall have filed his written statement. *OGLE v. KUNAS*

[2 Hyde, 279]

2. ————— Practice.—Affidavit of documents.—Insufficiency of affidavit.—Alteration by letter of terms of notice already served.—Civil Procedure Code (Act XIV of 1882), ss. 131 and 133.—Before the Court will make an order under section 133 of the Code of Civil Procedure, the preliminary steps mentioned in section 131 must be taken by the party applying for the order. *MOHENDRO NATH DAWN v. ISHUN CHUNDER DAWN*

[I. L. R., 10 Calc., 56]

3. ————— Discovery.—Civil Procedure Code, ss. 129, 136.—Discovery of documents.—Pardanashin women.—In a suit brought by two Mahomedan *parda-nashin* ladies for recovery of immoveable property by right of inheritance, an order was passed, under section 129 of the Civil Procedure Code, requiring the plaintiffs to declare by affidavit

INSPECTION OF DOCUMENTS.—Discovery—continued.

"all the papers connected with the points at issue in the case which were or had been in their possession or control." After some ineffectual proceedings, the plaintiffs were peremptorily ordered to file their affidavit on a certain date. On that date an affidavit was filed on their behalf by their brother and mook-tear, with a list of their documentary evidence, but the affidavit and list were considered defective upon several grounds, one of which was that the affidavit ought to have been made by the plaintiffs personally. Further time was then given to the plaintiffs to amend these defects, and ultimately they filed an affidavit purporting to be made by them personally, praying that the Court would have it verified in any manner thought proper, provided that their *parda-nashini* were not interfered with. The Court, under section 136 of the Code, dismissed the suit for want of prosecution, in consequence of the orders under section 129 not having been complied with, though ample opportunity had been given to the plaintiffs, and no sufficient ground for non-compliance had been shown. *Held*, without going into the question of the sufficiency or non-sufficiency of the action of the plaintiffs, with regard to the orders made under section 129 of the Code, that, looking at the disabilities of the plaintiffs and the circumstances of their suit, the case was not one in which it was expedient to enforce the liability to which they might have exposed themselves under the peculiar provisions of section 136. **KALIAN BIBI v. SAYDAR HUSAIN KHAN** . . . I. L. R., 8 All., 265

4. ——— Civil Procedure Code, 1877, s. 135.—Trial of issue before inspection granted.—The intention of section 135 of the Civil Procedure Code (Act X of 1877) is to give the Court the power of raising and determining an issue for the exclusive purpose of deciding the right to discovery of evidence which is to be used at the trial, and, therefore, from the nature of the case, before the hearing of the cause. It should be a rule of practice that when an order is made under section 135 of the Civil Procedure Code (Act X of 1877) by the Judge in chambers, the suit should be set down for the trial of the particular issue as well as of the cause itself when it comes to a hearing before the same Judge. **AHMEDBOY HURIBHOY v. VULLSEBOY CASSUM-BHOY** . . . I. L. R., 6 Bom., 572

5. ——— Inspection of accounts.—Suit for wrongful dismissal.—In a suit for wrongful dismissal of a servant of a gas company, in which the plaintiff alleged that the motive for dismissing him was his discovery of certain irregularities of the manager with regard to money-matters,—*Held* that he was entitled to inspect the accounts which had been checked by himself while in the company's service, the press copy letter-book containing copies of correspondence regarding his own conduct while in the company's service, and the account of a particular item in respect of which he alleged he had made discoveries that he imputed to the manager as the cause of his dismissal. **MITCHELL v. ORIENTAL GAS COMPANY** . . . 1 Ind. Jur., N. S., 323

INSPECTION OF DOCUMENTS continued.

6. ——— Right of mortgagee to withhold production of mortgage-deed or title-deeds for inspection.—Suit to avoid lien.—*B.* mortgaged by deed certain premises to *J. D.*, and at the same time delivered to him title-deeds comprising the said premises, and also other immovable property of *B. B.* subsequently became embarrassed and assigned all his immovable estate to trustees for his creditors. The trustees sued *J. D.* for a declaration that the immovable property other than the mortgaged premises was vested in them free from any lien of the defendant; and *J. D.* in his written statement claimed a lien on all the title-deeds, and submitted that he was not bound (until his claim was satisfied) to hand them over to the plaintiffs, or to produce them or his deed of mortgage for inspection. *Semle*.—That on the authorities *J. D.* was not bound to produce the title-deeds before satisfaction of his claim. *Quere*.—Whether before satisfaction he was bound even to produce his deed of mortgage. **BEATTIE v. JETHA DUNGARS** . 5 Bom., O. C., 152

7. ——— Inspection of will of Hindu.—Application by next of kin.—The Court will, on the application of one who is next of kin of a deceased Hindu, order a person who is in possession of an alleged will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected and a copy thereof taken by the applicant. **IN THE GOODS OF BALAKRISHNA GANPATJI** [1 Bom., 114

8. ——— Partnership books.—Partnership.—Production of documents.—One partner of a firm represents the other partners for the purposes of production of documents. Therefore, where the plaintiff, alleging that he had been a partner with the defendant and others in the firm of Ibrahim Kadu & Co., and that, on the dissolution of that firm, the amount then standing to his credit in the partnership books had been carried to his credit in the books of a new firm, in which he and the defendant only were partners, applied for an order on the defendant to produce, for the plaintiff's inspection, the books of Ibrahim Kadu & Co., which application was resisted by the defendant, on the ground that the other partners in the firm of Ibrahim Kadu & Co. had an interest in those books, and were not parties to the present application, or shown to have consented to it. *Held* that the plaintiff was entitled to the order. **JAKARIA v. KASIM** [I. L. R., 1 Bom., 496

9. ——— Privileged communications.—Principal and agent.—Suit for injunction to restrain use of trade marks.—Civil Procedure Code (Act X of 1877), s. 130.—Under section 130 of the Civil Procedure Code (Act X of 1877), a Judge has no discretion to refuse to allow inspection of documents relating to matters in question in a suit, provided they are not privileged. Confidential communications between principal and agent, relating to matters in a suit, are not necessarily privileged. *Held*, in a suit for an injunction to restrain the defendant from using certain trade marks, that tele.

INSPECTION OF DOCUMENTS.—Privileged communications—continued.

grams and letters between the plaintiff's firm in London and their managing agent in Bombay, relating to the subject-matter of the suit, were not privileged. **WALLACE v. JEFFERSON** . I. L. R., 2 Bom., 453

10. ———— Discovery.—Production of documents.—Privilege.—Solicitor and client.—Act XIV of 1882, s. 133.—Letters written by one of the defendant's servants to another, for the purpose of obtaining information with a view to possible future litigation, are not privileged even though they might, under the circumstances, be required for the use of the defendant's solicitor. In order that privilege may be claimed, it must be shown on the face of the affidavit that the documents were prepared or written merely for the use of the solicitor. **BIPRO DOSS DEY v. SECRETARY OF STATE FOR INDIA IN COUNCIL** . I. L. R., 11 Cal., 655

11. ———— Discovery.—Affidavit of documents.—Sufficiency of affidavit.—Further affidavit.—Inspection of documents.—Practice.—Where in an affidavit of documents privilege is claimed for a correspondence on the ground that it contains instructions and confidential communications from the client (the plaintiff) to his solicitor, it must appear not merely that the correspondence generally contains instructions, &c., but that each letter contains instructions or confidential communications to the attorneys with reference to the conduct of the suit. **Bewicks v. Graham**, 7 Q. B. D., 400, followed. **ORIENTAL BANK CORPORATION v. BROWN & Co.** . I. L. R., 12 Cal., 265

12. ———— Documents alleged not to be material.—Code of Civil Procedure, Act XIV of 1882, s. 135.—Affidavit of documents.—Production of documents.—Specific performance of contract to purchase.—Refusal to allow inspection.—In a suit for specific performance of a contract to purchase an indigo factory, the defendant denied that the agreement relied on was final, and alleged that the plaintiff had induced him to sign the agreement by means of representations regarding the nature, the extent, the value, and the net income of the property, all of which representations the defendant charged were false and fraudulent to the knowledge of the plaintiff. The plaintiff in his affidavit of documents set out a list of title-deeds evidencing his title to and the books of accounts and other papers and documents relating to the property agreed to be purchased, and these he claimed to withhold from the defendant's inspection, on the ground that they were not sufficiently material at that stage of the suit. *Held* that the documents were not protected. **SUTHERLAND v. SINGHEE CHURN DUTT** . I. L. R., 10 Cal., 808

13. ———— Telegraphic messages.—Sanction of Government to production.—Where parties require the inspection or production of telegraphic messages, it is for them, and not the Court, to obtain the necessary sanction of Government to the disclosure of such messages. **LEOKRAS v. PALSH RAM**

[2 N. W., 210]

INSPECTION OF DOCUMENTS—continued.

14. ———— Document referred to in written statement and omitted in list.—Practice.—Rules of High Court of 6th June 1874, 50, 52.—Where the defendant stated in an affidavit that a schedule annexed thereto contained a list of all the documents in his possession or power relating to the suit, and a certain other document was not mentioned in the schedule, though referred to by the defendant in his written statement, *Held* on the hearing of a summons to consider the sufficiency of the affidavit that the plaintiff could not cross-examine on the affidavit, but could only show it was not an honest affidavit. The proper course was to apply for inspection of the particular document referred to in the written statement and omitted from the schedule, if inspection was needed. **KENNELLY v. WYMAN**

[I. L. R., 1 Cal., 178]

15. ———— Practice where portion of document is protected from inspection.—Practice.—Sealing up immaterial parts.—Practice to be followed where a party producing documents wishes to have a certain portion of them sealed up. **HERRALL RUKHIT v. RAM SURUN LALL**

[I. L. R., 4 Cal., 835]

16. ———— Place for inspection.—Account books of business.—Place where business is carried on.—Contract made in Bombay to be performed up-country.—Civil Procedure Code, 1877, s. 132.—Defendant was owner of certain cotton-ginning factories at and near A. in the mofussil, and had also a place of business in Bombay. He entered into a contract in Bombay with the plaintiff to gin certain cotton of the plaintiff's at the said factories of the defendant in the mofussil. Plaintiff brought a suit for damages for the breach of this contract, and demanded inspection, in Bombay, of all defendant's books relating to the business of the said ginning factories belonging to the defendant. The defendant was willing to give the inspection asked for, but contended that it should be had at A., where all the books in question were kept, and objected to bringing the books down to Bombay as demanded by the plaintiff. *Held* that the contract, though made in Bombay, having been intended to be performed at a considerable distance from Bombay, at and near A., where the business of ginning was conducted, and where the books relating to the said business were kept, A. was the proper place at which to give inspection. **KEVALDAS SAKARCHAND v. PESTONJI NASSERVANJI**

[I. L. R., 5 Bom., 467]

17. ———— Disobedience of order for inspection.—Bombay Act I of 1865, s. 14.—Bombay Act IV of 1868, s. 15.—To render a person liable for disobedience of a notice under section 15 of Bombay Act IV of 1868, it is necessary that the documents required for inspection should be therein specified. Disobedience of an order to produce evidence under section 14 of Bombay Act I of 1865, clause 1, does not render a person liable to criminal prosecution, but simply to an adjudication in his absence. **REG. v. MANIKRAM SURAJRAM** . 11 Bom., 231

INSTALMENTS.**Decree payable by—**

See DECREE—ALTERATION OR AMENDMENT OF DECREE . . . 2 Hay, 68, 95

[4 Bom., A. C., 77
I. L. R., 2 All., 129, 320
I. L. R., 11 Calc., 143

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—INSTALMENTS.

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—ORDER FOR PAYMENT AT SPECIFIED DATE.

[I. L. R., 2 Bom., 356

Money payable by—

See CASES UNDER BOND.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 257, 258 (1859, s. 206).

See CASES UNDER LIMITATION ACT, 1877, ARTS. 74 AND 75.

See CASES UNDER LIMITATION ACT, 1877, s. 179 (1871, ART. 167; 1859, s. 20)—ORDER FOR PAYMENT AT SPECIFIED DATE.

Promissory note payable by—

See CASES UNDER LIMITATION ACT, 1877, ART. 75.

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—

[I. L. R., 1 Cal., 130

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[12 B. L. R., 37

7 W. R., 309

I. L. R., 3 All., 717

INSURANCE

Col.

1. LIFE INSURANCE	2681
2. MARINE INSURANCE	2682

1. LIFE INSURANCE.**Assignment of policy.—Death of**

assignee.—Death of assured.—Notice by assignee to company.—Payment of premia by executors of assignee.—Absence of legal personal representative of assured.—Refusal to pay over.—A., having insured his life in a certain Life Insurance Company, assigned his rights under the policy to B., the assignment on the face of it expressing no consideration whatever. The fact of the assignment was notified to the Company. B. after paying all premia due, died, appointing C. and D. his executors, who took out probate of his will, and paid all subsequent premia on the policy. A. died, and C. and D. then demanded payment of the policy-money. The Company, however, refused payment unless C. and D. first obtained the concurrence of the legal representative of A. to the payment.—Held that the Company were justified in refusing to pay the money in the absence of the legal representative

INSURANCE—continued.**1. LIFE INSURANCE—continued.****Assignment of policy—continued.**

of A. RAJNARAIN BOSE v. UNIVERSAL LIFE ASSURANCE COMPANY

[I. L. R., 7 Cal., 594; 10 C. L. R., 561

2. MARINE INSURANCE.**1. Construction of policy.—**

Onus probandi.—Exceptions in policy.—A. sued B. & Co. on a policy of insurance on the ship Alaya, from noon of the 24th November 1865, to noon of the 24th February 1866, "at and from and to all ports and places." The words "and to all ports and places" were written, the rest being printed. B. & Co. in their written statement admitted the policy, but set up the following exception: "All risks or losses arising from detention, &c., also from storms and gales of wind, or other perils of the sea, while touching or trading on the coast of Coromandel from Point Palmyras to Ceylon, and within soundings between the 15th October and the 15th December inclusive, are hereby excepted, which risks or losses are to be borne by the assured, and not by the insurers, notwithstanding anything to the contrary hereinbefore expressed." Held, firstly, it lay upon A. to prove that the loss did not fall within the exception. Held, secondly, that the meaning of the policy was that the ship was to be at liberty to proceed to or stay at any port she pleased, but that the insurers were not liable for any loss arising from perils of the sea in which the three following events were combined: first, that she was at the time touching or trading on the coast of Coromandel; secondly, that she was at the time within soundings; thirdly, that the loss happened between the 15th October and 15th December. Held, thirdly, upon the facts, the loss was within the policy, notwithstanding the exception. AGA SYUD SADUOK v. JACKARIAH MAHOMED 2 Ind. Jur., N. S., 308

2. Goods partly in

bales and partly in cases.—Insurance for gross amount.—A policy was effected upon a quantity of piece-goods, part in bales and part in cases. The bales and cases were separately enumerated and separately valued in the body of the policy, but the gross total was made up. Held that the words "free from particular average," following directly upon the gross total, must be taken to apply to the whole value of both lots, and not separately to the bales and separately to the cases. BEEROOPPO SETHY v. HURSMULL RAMOHUND 2 Hyde, 74

3. Particular average loss.—Liability of underwriters.—

In a policy of insurance effected in Bombay upon goods shipped from Calcutta to Jeddah, two clauses were inserted in writing, the rest of the policy being in the ordinary English printed form. The first written clause was in English as follows: "Warranted free of particular average, unless stranded, sunk, or burnt." The second was written on the margin of the policy in the Gujarathi language, and was to the following effect: "Insurance upon the goods to be without

INSURANCE—continued.**2. MARINE INSURANCE—continued.****Construction of policy—continued.**

damage. The loss arising from damage is to be on the head of the owner of the goods." *Held*, the underwriters of such a policy are liable to the insurer for a particular average loss where the vessel in which the insured goods are shipped is stranded, sunk, or burnt. *ESMAIL v. SHAMJEN POONJANI*

[I. L. R., 2 Bom., 550]

4. ————— *Notice of claim by insured.—Action brought before expiration of six months from date of notice.—Constructive total loss.—Meaning of the words "sunk," "stranded."*—Where insurers on receiving notice of a claim made against them under a policy of insurance distinctly repudiate and deny that any claim exists against them, or that the party serving such notice has any right to recover against them, there arises an immediate right to sue, and the insured is not bound to wait for the expiration of six months before taking proceedings to enforce his claim. Where it appeared upon evidence that goods on board a ship that was wrecked on a voyage from Karachi to Bombay, although much damaged by sea-water, were nevertheless of such merchantable value as to make it worth while to send them on to their port of destination,—*Held*, in an action against the insurers of the goods, that no claim for constructive total loss was maintainable. In an action upon a policy of marine insurance the evidence given with respect to the loss of the ship was as follows: "The vessel grounded near Dwarka. After the vessel struck, the water constantly broke right over all. . . . The cargo was all under water. The labourers were only able to work at ebb tide, and at high tide they could only see the top of the vessel's masts. . . . The vessel lay where she stranded seven days, and was then raised with casks." Some of the goods on board were insured by a policy which contained the clause "warranted free of particular average, unless sunk or burnt." It was contended for the plaintiffs that the ship had "sunk," and that the damage to the goods was therefore covered by the policy. *Held* that where a vessel runs aground and lists over, and is in consequence covered by the high tide, which causes damage to goods on board, it cannot be said that she has "sunk" within the meaning of the word as used in a policy of insurance, and therefore that a claim for particular average cannot be sustained under a clause in the policy—"warranted free of particular average, unless sunk or burnt." *LATHAM v. HURRUCKCHAND SOORATHAM* . . . I. L. R., 4 Bom., 314

5. ————— *Insurable interest.—"Interest or no interest?" effect of these words in a policy.—Stat. 19, Geo. II., c. 37.—Loan on "avang."—Insurance effected after loss of subject-matter of insurance.—Meaning and effect of the words "lost or not lost" in a policy.*—Policies of insurance between natives of India (those, at least, which do not contain the words "interest or no interest") are to be construed in the same way as such instruments have been uniformly construed by the general law merchant in Western Europe,—*viz.*, as

INSURANCE—continued.**2. MARINE INSURANCE—continued.****Construction of policy—continued.**

contracts of indemnity. A certain trade is carried on between native merchants in Western India with the coast of Africa and Madagascar by means of native vessels which leave the Indian ports early in the year, and after remaining in the ports of Africa and Madagascar for four or five months, leave on the return voyage about August or September. This trade consists in shipping goods at the Indian ports, to be disposed of at the African and Madagascar ports, and purchasing with the proceeds fresh goods to be similarly disposed of in the home ports. To enable traders to embark in this venture, it is their practice to borrow money of merchants on what is termed "*avang*;" that is, money borrowed on the condition that it is not to be repaid except in case of the safe arrival of the goods in the home ports on the return voyage, in which event the loan becomes repayable with interest at a high rate. *Held* that, having regard to the long-established practice in the port of Bombay, of insuring such risks, the interest of the lender of such a loan, in the goods on board a ship on her return voyage to India, is an insurable interest. *Semble*,—That an *avang* loan does not give the lender a charge on the goods. *Held* that a policy of marine insurance on goods is not invalid by reason of its having been effected subsequently to the loss of the goods, although the policy does not contain the words "lost or not lost." *JIVANJI NOORBHOY v. COORJI LILLADHAR* . I. L. R., 4 Bom., 305

6. ————— *Separate insurance of different species of article.*—Where a policy has been effected on a gross quantity of sugar, the fact that that sugar has been described in the margin of the policy as being in different lots containing different species of sugar, and being separately priced, does not raise any presumption that a separate insurance upon each separate species of sugar was intended by a policy-holder. *JOOSOP v. VARDON* [1 Hyde, 198]

7. ————— *Evidence of loss.—Jettison.—Protest of nacoda.*—In an action on a policy of insurance to recover the value of a portion of the goods insured lost by jettison, the protest of the nacoda and the Custom House vouchers showing that on the return of the ship to her port of sailing (being driven back by stress of weather), the goods alleged to have been lost were not on board her, are not sufficient as even *prima facie* proof of the loss. *RAMABHAI GIRDABHAI v. ALI AKBAR KAJRANI* [1 Bom., 6]

8. ————— *Evidence of average loss.—Usage of Mangrove.—Certificate of mahajans.*—In the case of a native policy of insurance expressed to be "according to the usage of Mangrove," the certificate of the mahajans at the port of distress or sale, if accompanied by the manifest of the shipment and the account sales, is to be held sufficient evidence of an average loss and of the amount of such loss, though the underwriter may answer a claim supported on such evidence by showing fraud on the part of

INSURANCE—continued.**2. MARINE INSURANCE—continued.****Evidence of average loss—continued.**

the shippers, the master of the vessel, or the mahajans. An alleged usage that the mahajans' certificate is deemed to be conclusive evidence against the underwriter without production of manifest and account sales, and that on proof of the certificate alone and of the policy the owner is entitled to recover his average loss, cannot be upheld, such not being a reasonable usage. *RANSORDASS BHOGILAL v. KESRISING MOHANLAL* . . . 1 Bom., 229

9. ——— Repairs to ship.—Deduction of one-third new for old.—It appeared on evidence that a ship was not by the repairs done to her put in a better condition than she had been in before sustaining the damage which constituted the partial loss. *Held* that the rule, by which a deduction of one-third new for old is calculated in favour of the insurers who pay for the repairs, did not apply. *SEEDICK GHOSAL v. APCAR* . . . Bourke, 418

On appeal in same case, —*Held* the rule allowing one-third "new for old" in cases of insurances on ships is not inflexible; therefore where the ship insured was not worth repairing, and was not in fact repaired, it was held that one-third "new for old" ought not to be allowed. *APCAR v. HOWAR BYE* [1 Ind. Jur., N. S., 237]

10. ——— Unseaworthiness of ship.—Liability of insurer.—An insurer relying on the certificate of a competent surveyor that the ship is seaworthy is entitled to recover, in the event of the ship's loss, notwithstanding it be shown that she was unseaworthy at the time the policy attached. *HOSAIN IBRAHIM BIN JOHUE v. MUTTY LOEL* [Cor., 5: 2 Hyde, 107]

11. ——— Time policy.—Warranty of seaworthiness.—Implied warranty.—The warranty of seaworthiness in a time policy at the commencement of the risk is not a continuing obligation cast upon the assured while the risk is running. So held by the Judicial Committee (affirming the judgment of the Supreme Court at Calcutta) in an action brought for a total loss, by stranding, within the time of the running of the policy, after leaving an intermediate port, the defence being that at the time of the loss the vessel was unseaworthy by reason of an insufficient crew, she having sailed from the intermediate port without sufficient hands to work the vessel, although she had a sufficient crew at the time she started for the voyage. *Semble*,—There is no implied warranty of seaworthiness in a time policy. *JENKINS v. HEYCOCK* [5 Moore's L. A., 361]

12. ——— Goods overvalued.—Reason for overvaluation failing.—Liability of underwriters.—Where, in a valued policy of insurance, the goods insured were valued at an amount greatly in excess of their real value, which amount was intended to include the amount in which the insured was liable to Government on account of bonds executed by him in respect of the goods insured, and after loss

INSURANCE—continued.**2. MARINE INSURANCE—continued.****Goods overvalued—continued.**

of the goods Government elected not to enforce the bonds, —*Held* that the underwriters were entitled to be subrogated in the amount of the bonds, and were liable to the insured only for the real value of the goods together with a fair profit. *HARIDAS PURSHOTAM v. GAMBLE* . . . 12 Bom., 23

13. ——— Abandonment.—Notice of abandonment.—Where an insurance office is sued on a constructive total loss, there must be a distinct and decided abandonment of all right on the part of the insured. The notice of abandonment should be immediate. The question always is whether the delay in giving notice is reasonable, with reference to the particular circumstances and the owner's means of ascertaining the position of the ship; where the suit is for a total loss, the judgment may be as for an average loss. *SEEDICK GHOSAL v. APCAR* [Bourke, O. C., 391]

14. ——— Abandonment of ship and cargo.—Sale.—Right of purchaser.—The ship *Maharanes* was wrecked and abandoned with her cargo to the underwriters. Nine cases, part of the cargo, which with two others were separately insured, were recovered in good condition from the wreck. Of this all parties had notice. The wreck and cargo were subsequently sold by the ship's agents, who were also agents for the underwriters, for the benefit of all concerned, the cargo being described generally. *Held* that the nine cases did not pass to the purchaser at the sale, as they could not be legally abandoned; and on the facts, that the defendants were not liable as having induced the plaintiff to believe that they intended to sell more than what was ceded to the underwriters by the abandonment. *MITCHELL v. GLADSTONE* . 1 Ind. Jur., N. S., 406

15. ——— Constructive total loss.—In a suit on a policy of insurance as for a total loss, where goods were shipped for the voyage from Surat to Kurrachee, and the vessel, having sprung a leak, was forced to put into Dwarka, at which place the goods (with exception of some iron thrown overboard during the voyage) were landed and placed in a warehouse, from which a portion (some castor oil and jagari) was carried off by robbers; and the residue of the cargo, consisting principally of cotton seeds which were dried and cleaned, was sold; and the proceeds, after deducting freight expenses, remained in the hands of mahajans, to be paid to whomsoever might be entitled to them, —*Held*, first, that the loss by robbers, although not expressly mentioned in the policy, was one of the perils insured against; second, that the Judge below being erroneously of opinion that when the goods were once landed damaged there was nothing to do but to sell everything for the benefit of underwriters, and having consequently recorded no finding on the material question whether the whole or any part of the cargo was practically capable of being sent in a marketable state to the port of destination, the suit must be remanded, in order that the Judge might determine whether there was a constructive total loss which entitled the plain-

INSURANCE—continued.**2. MARINE INSURANCE—continued.****Constructive total loss—continued.**

tiffs to abandon; and if not, that he might award such a proportion of the value of the iron and of the jagari and oil which were actually lost, and of the amount of the deterioration in the cotton seeds and other articles, as the sum insured by the defendant bore to the whole sum, taking into account also in that case what proportion the sum insured bore to the actual value of the goods. *DWARAKADAS LALUBHAI v. ADAM ALI SULTAN ALI* . 3 Bom., A. C., 1

16. ———— *Value of ship when repaired.*—In a suit to recover the amount of insurance on a ship which had been abandoned on an alleged constructive total loss, it appeared that the ship had sustained severe injury from foul weather, but that her value, after being repaired, would exceed the cost of repairing her by about 3,000 dollars. *Held*, therefore, that there was not a constructive total loss, and that, in order to establish a constructive total loss, there must have been a threatened destruction, or absolute temporary privation, of the insurer's ownership, or an alienation of his property in the thing insured. *GAHAN v. OWEN* [Bourke, O. C., 17: Cor., 149

Held no constructive total loss in *MACKINNON v. DUNDAS* . . . Bourke, O. C., 228

17. ———— *Notice of abandonment.*—A cargo, consisting of railway sleepers, was insured by the plaintiffs in the ship *Heimdhaf* from Geography Bay to Calcutta, and expressed in the policy to be warranted from all risks, except total loss. In proceeding up the River Hooghly, in charge of a pilot, on the 30th April, the vessel grounded on the Rungafulla Sand, heeled over, and lay imbedded in the sand. Endeavours were made unsuccessfully to get her off. On 5th May, Lloyd's surveyor inspected the vessel, and reported that, considering her position, the state of the tide at that season, and the expense of getting her off, it was unadvisable to go to further expense in doing so; and that the cost of repairs would, in all probability, amount to much more than the value of the ship when repaired. Some of the sleepers had been then jettisoned, and the surveyor recommended that the vessel and cargo should be abandoned, and sold by public auction to the highest bidder. Attempts were made, but unsuccessfully, to get some of the cargo off, and the sleepers were of such a quality that they would not float. The consignees accordingly caused the ship and cargo to be sold by public auction in Calcutta on 12th May. No notice of abandonment was given. The sleepers realised the sum of Rs 450. The purchaser hired boats and began unloading the ship; he unloaded 78 sleepers in all. On 14th May the ship floated off and came up the river, with the rest of the cargo in safety, proving not to be so much damaged as was supposed. In an action on the policy of insurance, — *Held* that there was not such a total loss of the cargo as entitled the plaintiffs to recover as for a total loss without giving notice of abandonment. *Held*, on appeal, *per PHAR and MACPHERSON, JJ.*—The plaintiffs failed to prove any

INSURANCE—continued.**2. MARINE INSURANCE—continued.****Constructive total loss—continued.**

necessity for the sale of the ship, or that it was impracticable to convey the sleepers, or a material portion of them, to their destination. But if the insured were legally justified in abandoning and claiming as for a total loss, notice of abandonment ought to have been given. The condition and behaviour of the ship when she got off the shoal should be looked at as indicating her real state and strength while she was on it. *Per PAUL, J.*—Considering, upon the evidence of the circumstances at the time of the sale, that the ship was not worth repairing, and that she was expected to sink at any time, the sale of her was justifiable. The sale of the cargo was also justifiable; it could not have been carried, in a mercantile sense, on shore, much less to its destination. The sale caused a total loss, and there was no need for notice of abandonment. *EAST INDIAN RAILWAY COMPANY v. AUSTRALASIAN INSURANCE COMPANY*

[6 B. L. R., 218

S. C. on appeal . . . 7 B. L. R., 347

INTENTION OF JOINT OR SEVERAL OWNERSHIP.

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INTENTION OF PARTIES AS EVIDENCED BY THEIR ACTS.

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[4 B. L. R., P. C., 16

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[25 W. R., 376

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1. MISCELLANEOUS CASES.

1. Accounts.—*Suit for balance of accounts.—Absence of contract for interest.*—In a suit relating to balance of accounts, probabilities are not sufficient to support a decree for interest in the absence of a contract for interest. *JOY NARAIN BHUGGUT v. KASHEE CHOWDREY*. 16 W. R., 143
2. Execution of decrees.—Where, in the course of executing a decree, accounts, in which interest was entered and charged, had, from time to time, been filed in Court, and no objection had been taken thereto by the judgment-debtor from 1870 up to 1880,—*Held* that it was too late to object to interest being allowed, and that the High Court would not interfere to alter the rate where it appeared that the District Judge had found that the rate ruling in the District was 12 per cent., and had allowed that rate accordingly. *GOPAL SAHU DEO v. JOYRAM THWARY*. I. L. R., 7 Calc., 620 [9 C. L. R., 402]
3. Arrears of rent.—*Act X of 1859, s. 20.—Discretion of Court.*—The enactment

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Arrears of rent—continued.**

of section 20 of Act X of 1859, that arrears of rent, unless otherwise provided by written agreement, shall be liable to interest at 12 per cent. per annum, does not make it imperative on the Court to award interest in a decree for arrears of rent, but the Court has a discretion in awarding interest in such a case. In an ordinary suit for rent, the question whether the rent is fixed or variable is not involved. **BECKWITH v. KISHTO JESBUN BUCKSHER**

[**Marsh.**, 278: 2 Hay, 286

KASHEENATH ROY CHOWDHRY v. MYNUDDEN CHOWDHRY 1 W. R., 154

4. ——— Prolongation of rent suit by tenant.—In a suit for seven years' arrears of rent it appeared that the plaintiff had previously sued and been nonsuited, and that the tenant had protracted the proceedings. *Held* that the Court ought to award interest on the arrears. **RAMJEBUN BOSE v. TRIPPOORA DOSSEN**

[**Marsh.**, 396: 2 Hay, 449

5. ——— Withholding rents.—Where rents are withheld interest may be given, whether it is provided for in the pottah or not. **LALLA SHEO SAHAY SINGH v. KUMMORUNISSA BEGUM** 2 W. R., Act X, 68

6. ——— Bengal Act VI of 1862.—*Discretion of Court.*—Bengal Act VI of 1862 did not alter or affect the discretionary power of the Court to award interest or costs in a decree for arrears of rent. **BISSONATH DEB v. HURBO PERSHAD CHOWDHRY** 2 W. R., Act X, 88

7. ——— Agreed instalments of rent.—Interest may be decreed with arrears of rent, but it should not be decreed upon instalments of rent as from dates during the currency of the year, unless the parties had agreed that the rent should be paid by instalments at those dates. **BHARUTH CHUNDER ROY v. BAFIN BEHAR CHUCKERBUTTY** [9 W. R., 495

8. ——— Pendency of suit for enhancement.—While a suit for enhancement of rent is pending, defendant is not liable for interest, inasmuch as his rent is undetermined; but after the rent is determined he is liable to interest for all arrears from, and for all instalments after, that date. **RAJMOHUN NEOGEE v. ANUND CHUNDER CHOWDHRY** 10 W. R., 166

9. ——— Discretion of Court.—It is in the discretion of the Court to allow interest on arrears of rent. **SATTYANAND GHOSAL v. ZAHIR SIKDAR** 6 B. L. R., Ap, 119

RADHIKA PRASUNNO CHUNDER v. URJOON MAJHEE 20 W. R., 128

10. ——— Enhancement of rent.—In a suit in which a decree is given for arrears of rent at an enhanced rate, interest is to be allowed not only from the date of the decree, but from the

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Arrears of rent—continued.**

time the rent became due. **AHSANOOILLAH v. KAJEE AFTABQODDEEN** I. L. R., 4 Calo., 594
[3 C. L. R., 362

11. ——— Discretion of Court.—Every arrear of rent, unless it is otherwise provided by an agreement in writing, is liable to bear interest at 12 per cent. from the time when it, or each instalment of it, became due. The discretion which a Court has to refuse interest can only be exercised upon very clear grounds. The mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent, does not amount to a waiver of such right. **JOHOORY LALL v. BUL-LAB LALL** I. L. R., 5 Calo., 102
[4 C. L. R., 349

12. ——— Bengal Act VIII of 1869, s. 21.—*Rate of interest.*—Under Bengal Act VIII of 1869, section 21, it is discretionary with the Judge to give interest at 12 per cent.; he is not obliged to award interest to that extent. **DHIRAJ MAHTAB CHAND v. DEBKUMARI DEBI** [7 B. L. R., Ap, 26

13. ——— Bengal Act VIII of 1869, s. 21.—*Discretion of Court.*—In suits for arrears of rent, a Court of Justice is not bound in every instance to award interest at 12 per cent., the rate specified in Bengal Act VIII of 1869, section 21, but has discretion either to disallow interest altogether, or to reduce the rate according to the circumstances of each case. Where a plaintiff sought to recover more than what was actually due, and it did not appear that defendant would have refused payment if the sum actually due had been demanded, the Court reduced the rate of interest to 6 per cent. **FUSSEEBUN v. ASHREFOONNISSA** 23 W. R., 463

14. ——— Erroneous dismissal of suit by lower Appellate Court after admission of sum due.—A suit for arrears of rent at enhanced rates where plaintiff fails to adduce sufficient evidence to support his claim for enhancement should not be dismissed altogether if defendant admits a certain sum to be due for the years in question, but should be decreed to the extent of the admission. In such a case, where the first Court had decreed rent at the rates admitted with some enhancement, and the lower Appellate Court seeing no grounds for enhancement dismissed the suit, the High Court granted the amount admitted with interest from the date of the first Court's decree. **AKASHBUTTY KOORE v. HERRA RAM MUNDUR** 24 W. R., 82

15. ——— Bengal Act VIII of 1869, s. 21.—Where a pottah stipulates that, in case of default of punctual payment of rent, all arrears shall bear the customary and legal interest, 12 per cent. per annum will be allowed in analogy to Bengal Act VIII of 1869, section 21. **ANUNGO MOHUN DEB ROY v. MUDDUN MOHUN MOZOOMDAR** [1 C. L. R., 147

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Arrears of rent—continued.**

16. ————— *Mesne profits.—Interest.—Rent in kind.*—Where rents were collected in kind instead of in money, and the Judge, in awarding mesne profits, allowed a much larger rate of interest than was usually allowed on rents paid in money,—*Held* that he was wrong in so doing. No difference in that respect should be made between rents paid in kind and those paid in money. **RAIKISORI DAS v. BONOMALI CHARAN MAITI**
[1 B. L. R., S. N., 14: 10 W. R., 209]

17. ————— *Award.—Power of Court to give interest.*—A Court has no discretion to deal judicially with the merits of a case determined by arbitrators, but is bound to pass judgment according to their award. Accordingly it cannot decree interest which the arbitrators have not awarded. **MOHUN LAL SHAHA v. JOY NABAIN SHAHA CHOWDHRY**
[23 W. R., 105]

18. ————— *Bill of exchange.—Deduction of interest as discount from bill of exchange.—Interest according to rules published by Loan Company.*—It is not illegal to deduct interest in the shape of discount from the amount advanced on a bill of exchange, if such deduction be made with the full knowledge and consent of the borrower, and under such circumstances as would not lead to the inference that unfair advantage was taken of the position of the borrower. The fact that a Loan Company, registered under the provisions of Act X of 1866, has published and caused to be registered rules regarding the payment of interest on loans, does not bind a borrower to pay the interest as required by those rules, unless he has contracted to do so. **TIPPERAH LOAN OFFICE v. GOUR CHUNDER BARMAN**
[2 C. L. R., 349]

19. ————— *Bond.—Construction of bond.—Calculation of interest.*—On the adjustment of an account of the principal and interest due on a bond, a karanamah or deed of agreement was entered into by the parties, in which, besides the original sum, a further sum for interest accrued thereon was declared due and agreed to be paid off by instalments before a given time. Payments were made at irregular periods, which payments the bond-holder claimed to appropriate to keeping down the interest upon the whole sum composed of both the original principal sum as well as the sum mentioned in the karanamah as accrued thereon for interest. *Held*, upon the construction of the instrument, that the principal sum alone carried interest, and that all payments made in pursuance of the stipulations were to be applied in the first instance to satisfy such interest, the excess of the payments only being appropriated towards the liquidation of the principal sum due. **BAMUNDOSS MOOKERJEE v. OMEISH CHUNDER RAY**
[6 Moore's I. A., 289]

20. ————— *Payments on bond.—Mode of calculating interest.*—Where payment was made upon a bond, the amount paid being less than the interest due,—*Held*, the payment ought to go to

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Bond—continued.**

reduce the amount of interest due, and the creditor in a suit upon the bond was entitled to a decree for the principal and balance of interest up to date of decree. **LUCHMESWAR SINGH v. LUTF ALI KHAN**
[8 B. L. R., P. C., 110]

21. ————— *Compound interest.—Interest per mensem.*—Interest at the rate of one per cent. per mensem, to be calculated at the end of each year, does not mean compound interest, so as to admit of interest being charged upon the note, but interest calculated per mensem but payable per annum. **RAJUNDEE NABAIN RAY v. BIJAI GOVIND SINGH**
[2 Moore's I. A., 253]

22. ————— *Decree of Privy Council, Construction of.—Order nunc pro tunc.*—On a question of construction of an order of Her Majesty in Council, the words "the plaintiff is to have judgment for his moiety with interest at the full legal rate, and the costs of the proceedings in the Court below," were held as intended to give the plaintiff the moiety claimed by him of the sum which he alleged to be due for principal and arrears of interest (at 12 per cent.) equal to the principal upon a certain karanamah and bond, and to allow the interest from the date of the institution of the suit up to realisation. *Held*, further, that in the account taken by the appellant as the foundation for his proceedings in execution he was not warranted in making a rest at the date of the order of the Principal Sudder Ameen dismissing the suit, and assuming that interest should run upon the consolidated sum from that date; as in the absence of special directions it could not be presumed that the Appellate Court intended to make an order *nunc pro tunc* which would give compound interest from the date of the decree of the Court of first instance. **GOPEE KISSAN GOSWAMEE v. BRINDABUN CHUNDER SIRCAR**
[19 W. R., P. C., 41]

23. ————— *Costs.—Costs not mentioned in decree.*—*Held* that the principle of the Full Bench ruling, **Mosoodun Lall v. Bhakaree Singh**, B. L. R., Sup. Vol., 603: 6 W. R., Mis., 109, is as much applicable to interest upon costs as it is to interest upon mesne profits not awarded by the decree, and must be applied to all decrees passed, either before or after the date of that judgment. **LEELANUND SINGH v. RAM NABAIN SINGH**
15 W. R., 416

24. ————— *Interest on costs where decree does not specially give it.*—Costs in the suit carry interest unless the contrary is distinctly stated in the decree. **BHARUT CHUNDER SIRCAR v. GOVERN PARSHAD ROY**
18 W. R., 34
HARADHUN SANDYAL v. RASH MONEE DASSIA
[2 W. R., Mis., 21]

25. ————— *Interest not mentioned in decree.—Execution of decrees.—Procedure.*—The Court in executing a decree has no power to allow interest on costs when not mentioned in the

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Costs—continued.**

decree. The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it. *ULFUTUNNISSA v. MOHAN LAL SUKAL* **6 B. L. R., Ap., 33**

BROJO SOONDURSE DEBIA v. ANUND MOYER DEBIA
[16 W. R., 302]

26. ————— *Interest not mentioned in decrees.*—Where the decree gives interest upon the principal sum recovered only, but not upon costs, the plaintiff is not entitled to such interest. *AMBEROONISSA KHATOON v. MAHOMED MOHUFFUR HOSSEIN CHOWDREY* **18 W. R., 103**

27. ————— *Interest not mentioned in decrees.*—Where a decree gives interest upon the principal sum recovered only, and no mention is made as to interest on costs, the successful party is not entitled to such interest. *MAHTAB CHUNDER BHADOOR v. RAM LALL MOOKERJEE*
[I. L. R., 3 Cal., 351 : 1 C. L. R., 158]

28. ————— *Interest not mentioned in decrees.*—*Decree of Privy Council.—Means profits.*—In a suit to recover certain property, the plaintiff obtained a decree for a portion thereof, but on appeal the High Court reversed the decree, and declared him entitled to the whole. On appeal to the Privy Council the decree was, that the decision of the High Court be “reversed with costs,” and the decree of the first Court “affirmed with costs.” On this the first Court ordered the restitution of the property with *wasilat*, and also that the defendant should obtain interest on the costs both of the first Court and of the Privy Council; but he disallowed the costs of the High Court as not being expressly awarded by the Privy Council decree. *Held*, the defendant was entitled to *meane profits*. Interest on the costs of the Privy Council should not be given, the decree being silent on the point; but the costs of the first Court would carry interest. The words “with costs” in the portion of the decree of the Privy Council affirming the decree of the first Court, mean the costs of the proceedings in the High Court. *GURUDAS RAI v. STEPHENS*
[13 B. L. R., Ap., 44 : 21 W. R., 195]

BHOZA RUGHBUR SINGH v. BHOZA RAJ SINGH
[3 N. W., 319]

29. ————— *Execution of decrees of Privy Council.—Costs of translation and printing.*—Where, on appeal to the Privy Council, it was ordered that the decree of the High Court be reversed with £276 12s. 2d. costs, and that the decree of the Zilla Court be affirmed with costs in the Courts below, in execution of the decree it was held that the decree-holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council, and that he was entitled to interest upon those costs, but not to interest upon the said £276 12s. 2d. *MADAN THAKUR v. LOPEZ* **9 B. L. R., Ap., 23**

S. C. MUDDUN THAKOOR v. MORRISON
[18 W. R., 253]

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Costs—continued.**

UMATUL FATIMA v. AZHUR ALI
[9 B. L. R., Ap., 23, note]

S. C. OOMATOOL FATIMA v. AZHUR ALI
[15 W. R., 356]

ASGUR ALI v. NOGENDRO CHUNDER GHOSH
[23 W. R., 463]

SARODA PRASAD MULLICK v. LUCHMIPAT SINGH DUGAR (where, however, *MAREBY, J.*, dissented from the practice)
[9 B. L. R., Ap., 23, note : 18 W. R., 69]

30. ————— *Execution of decrees of Privy Council.—Costs of translation and printing.*—Where an order of Council in England awarded costs incurred in this country, including charges for translation and printing,—*Held* that the costs should carry interest at 6 per cent. *NIL MADHUB DOSS v. BISSUMBHUR DOSS*
[21 W. R., 411]

31. ————— *Privy Council order awarding costs.—Execution of decrees.—Act XXIII of 1861, ss. 10 and 11.—Interest not given by decree.*—Where an order passed by Her Majesty in Council on report of the Judicial Committee awards costs, but is silent as to interest on the costs so awarded, it is not competent to the Court which has to execute the order to direct payment of the costs with interest. The principle of the decisions in cases arising under sections 10 and 11 of Act XXIII of 1861, which have established a similar rule of practice in executing decrees passed by the Courts in India, approved. Interest not provided for in the order of the Privy Council may, however, be allowed in execution where the parties have agreed to submit the matter to the discretion of the Court executing the order. *FORESTER v. SECRETARY OF STATE*
[I. L. R., 3 Cal., 161 : L. R., 4 I. A., 137]

LEKRAJ ROY v. MAHTAB CHAND . **21 W. R., 147**

32. ————— *Calculation of interest.—Set-off.*—Where a plaintiff obtains a decree with costs and interest upon the costs, the defendant being declared entitled to the set-off on account of costs, the interest should be calculated on the amount due to plaintiff after deduction of the set-off. *AMANUT v. BINDHOO* **13 W. R., 133**

33. ————— *Interest on costs refunded.*—Interest is awardable on costs refunded on the reversal of a decree on which costs were recovered. *KEDAR NATH PAKRASEE v. DOYA MOYER DEBIA* **20 W. R., 49**

34. ————— *Debt or law-suit purchased.—Outstanding claim.*—Where a debt or law-suit has been purchased, interest ought not to be given thereon for the whole period during which the purchaser allows the claim to be outstanding, nor necessarily on the whole debt when the purchase-money is very much below the amount of the principal. *UNNODA SOONDURSE DOSSEE v. OODHUB NATH ROY*
[11 W. R., 125]

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.**

35. ——— *Debtor and creditor.—Power of Court to give interest on any sum overdue.*—Where a sum of money becomes due and payable at a specified time, the Court may award interest in the shape of damages for such period thereafter as the money remains unpaid. *TARA CHAND BISWAS v. NAFAR ALI BISWAS* **1 C. L. R., 236**

36. ——— *Suit on bond.*—*Offer to pay amount into Court.*—In a suit on a bond, where it was shown that the obligor had offered to pay the principal and interest into Court,—*Held* that he should be relieved from interest from the date of such offer. *GUDI JANAKAYYA GARU v. GARUDA REDDI. GARUDA REDDI v. GUDI JANAKAYYA GARU* **1 Mad., 124**

37. ——— *Right to interest.*—*Refusal to accept portion of sum due.*—A decree-holder is not bound to accept a sum tendered to him in part satisfaction of his decree. He is entitled to require payment of the principal and interest in full; and the refusal to receive a part of what is due to him will not deprive him of his right to interest. *KUNHYA SINGH v. TOODYUN SINGH* **7 W. R., 20**

38. ——— *Delay in suing.*—A creditor is not bound to bring his action to suit the convenience of the debtor, and may, where two parties are jointly and severally liable on a bond as principal and surety, defer bringing his suit to the last moment the law allows, and he is not entitled to a less sum for interest if he does so. *MAHOMED ROHMOODDEEN v. INDOOR CHUNDER JOWHUR* **[19 W. R., 192]**

39. ——— *Decree on mortgage.*—*Leaves to pay at once to avoid high rate of interest.*—In giving the plaintiff a decree on a mortgage which provided interest at 24 per cent., it was directed that the defendants, in order to avoid the payment of further interest at that high rate, might be at liberty to pay the amount of the decree at once without waiting for the expiration of the usual six months. *MOONZOORAD DOWLA v. MEHIDI BEGUM* **[7 C. L. R., 206]**

See CHOTOOLALL v. MILLER **7 C. L. R., 267**

40. ——— *Principle of deducting payments on account of decrees.*—The rule as to making up an account of interest in mortgage cases,—*viz.*, that when a payment is made it is to be deducted from the interest, and not from the principal,—extended to the execution of ordinary decrees. The balance of interest is never added to the principal so as to produce compound interest. *GOOROO DASS DUTT v. UMA CHURN ROY* **22 W. R., 525**

41. ——— *Interest on sum wrongly credited.*—The obligee of a bond for Rs7,000 gave the obligor an assignment of Rs5,319 on account of rent due to the latter by the former, and the question in special appeal being whether the item of Rs50 paid on account of Government revenue had been twice credited as alleged by the obligor (appellant), the Court held that it had only once been credited.

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Debtor and creditor—continued.**

The respondent on cross-appeal claimed interest on the Rs50 for six years and eight months at twelve per cent. per annum, on the strength of a stipulation in the bond that, from a certain date, interest should accrue on the principal; but the Court disallowed the claim, on the ground that payment of interest on the item paid as Government revenue was neither expressly stipulated for nor contemplated by the parties, and because it was open to the respondent to take measures to realise the sum so paid instead of letting it lie over and double itself by interest. *SHIBSUREN DEBIA v. LADLY* **17 W. R., 71**

42. ——— *Mortgagee in possession.—Suit for redemption.*—The principle of construction, that when a creditor sues for his principal and interest (the latter being equal or more than equal at the time of the commencement of the suit to the principal) he is not debarred from charging subsequent interest for the period during which he is kept out of his money by his debtor's resistance of the demand, is not applicable to a case in which a mortgagee in possession is not a party suing for the money, but the party resisting by every means in his power a claim to redemption and the final settlement of the account. *AJIMUT ALI KHAN v. JOWAHIR SINGH* **14 W. R., P. C., 17**

S. C. AJIMUT ALI KHAN v. JOWAHIR SINGH
[18 Moore's I. A., 404]

43. ——— *Delay of decree-holder to take out execution.*—The fact of a decree-holder having delayed for a considerable time to take out execution of his decree is no ground for the Court refusing to allow him interest at the rate directed by such decree, to be paid upon the principal sum recovered, from the date of decree until realisation. *BABY MADHON TRIVADI v. RAM GOPAL SIBOAR* **[3 C. L. R., 523]**

44. ——— *Setting up adverse title.*—In a suit to recover title-deeds and other property, the defendant claimed a certain sum as being due to him, and in the plaint the plaintiff offered to pay the defendant all that was due up to that date, provided the deeds and property were given up. The defendant, however, claimed a right to hold them under an adverse title. *Held* that the defendant was only entitled to interest up to the date of the plaint, and not up to the date when the money due was actually paid. *JUGGERNATH DASS v. BRIJNATH DOSS* **[I. L. R., 4 Cal., 322; 3 C. L. R., 375]**

45. ——— *Goods sold.—Suit for price of goods.—Interest before suit.*—Where there was no time fixed or agreed for payment of the price of goods bought, nor was any demand of price made accompanied with an intimation that interest from the date of demand would be charged,—*Held* that interest could not by law be decreed for the period prior to the institution of the suit. *PALMER v. MADHOO PERSAUD* **2 Agra, 131**

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.**

46. ——— **Government promissory notes.**—*Interest on interest of Government paper withheld.*—Interest may be claimed on the interest of Government promissory notes withheld by another. **TARUCKNATH MOOKERJEE v. GOURRECHURN MOOKERJEE** . . . 3 W. R., 147

47. ——— **Insolvency proceedings.**—*Power of High Court.*—*Proceedings under Insolvent Act, 11 & 12 Vict., c. 21.*—Proceedings were taken under the Insolvent Act, 11 & 12 Victoria, Cap. 21, and the proceeds of certain goods claimed by the Official Assignee paid by the Assignee into the Bank of Bengal. In a suit brought in the High Court at Calcutta by A. against the Official Assignee claiming the proceeds of the goods paid into the Insolvent Court,—*Held*, on the Court making a decree in favour of the plaintiff, that the High Court, being a Court of law and equity, had power to award interest on the amount as against the Official Assignee. **MILLER v. BARLOW** . . . 14 Moore's L. A., 209

48. ——— **Mesne profits.**—*Decree for mesne profits.*—*Judgment-debt.*—According to the practice of the native Courts in Bombay, a sum found due for mesne profits was a judgment-debt and carried interest by its own force. On petition in the native Court after decree upon appeal in England, interest was awarded on the amount of mesne profits decreed, though not prayed for in the plaint, or given by the decrees in India or the order of affirmance in England. **KIRKLAND v. MODER PESTONJEE KHOORSHEDJEE** . . . 8 Moore's L. A., 220

49. ——— **Suit for mesne profits.**—In a suit for mesne profits (not being a suit for land and its mesne profits) interest on mesne profits cannot be recovered. **CHAKU MODAN TOHANA v. DULLABH DWARKA** . . . 9 Bom., 7

50. ——— **Interest previous to suit.**—Although interest as such cannot strictly be allowed upon mesne profits previously to the institution of the suit, the Court, in estimating what loss has been sustained by the plaintiff in being kept out of possession, may take into consideration that if he had received the rents year by year he would have been able to make use of the same, and may thus calculate the interest in the damages to be awarded. **PROTAP CHUNDER BOROAH v. SURENO MOYEE** [14 W. R., 151]

51. ——— **Discretion of Court.**—There being no rule of law obliging the Court to allow interest on mesne profits, it is a matter for the discretion of the Court upon consideration of the facts, whether to allow interest or not. **KISHNANAND v. KUNWAR PARTAB NARAIN SINGH** [I. L. R., 10 Cal., 792; L. R., 11 I. A., 88]

52. ——— **Calculation of interest.**—Interest on mesne profits may be allowed year by year during the period of dispossession. **MUNERAM ACHARJEE v. TURUNGO** . 7 W. R., 173

53. ——— **Interest withheld until date of decree.**—Interest on a sum awarded for

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Mesne profits—continued.**

mesne profits may properly be withheld until the date of the decree, since the amount is not ascertained before that time. **BENGAL COAL COMPANY v. DAREEMBAH DABEA** . Marsh., 105; 1 Hay, 181

MOBARUK ALI v. BOISTUB CHURN CHOWDREY [11 W. R., 25]

54. ——— **Date of assessment of mesne profits.**—Although the common practice is to make interest payable from the date on which the mesne profits are assessed, interest was given in a suit for mesne profits which ought to have been paid by the defendants, but which plaintiffs had been made to pay, from the date when they ought to have been paid by the defendants. **SOKHNE MONKE DEBIA v. BRIJORAJ MOOKERJEE** [17 W. R., 228]

55. ——— **Right to interest.**—The plaintiffs were held entitled to interest on mesne profits. **LULEET SINGH v. ALI REZA** [8 W. R., 322]

56. ——— **Act XXXII of 1839.**—*Interest from institution of suit.*—By the law and practice in India, independently of the provisions of Act XXXII of 1839, a decree might award interest as of course on mesne profits from the date of the institution of the suit in which they were claimed. Such interest is not forbidden by the terms of the Act referred to. **HURROPERSAUD ROY v. SHAMAPERSAUD ROY**

[I. L. R., 3 Cal., 654; 1 C. L. R., 499
L. R., 5 I. A., 31]

57. ——— **Interest from commencement of suit.**—Interest on mesne profits may be allowed from the commencement of the suit at the annual rate allowed by the Court. **HURROPERSAUD ROY v. SHAMAPERSAUD ROY**, I. L. R., 3 Cal., 654, followed. **MUDUN MOHUN SINGH v. RAM DASS CHUCKERBUTTY** . . . 6 C. L. R., 357

58. ——— **Jurisdiction of Court of Revenue.**—*Act XVIII of 1873, s. 93, cl. (h).*—*Suit for profits.*—A Court of Revenue is competent, in a suit for profits, under section 93, clause (h), of Act XVIII of 1873, to award the interest claimed on such profits. **TOTA RAM v. SHEER SINGH** [I. L. R., 1 All., 261]

59. ——— **Interest up to decree.**—*Rate of interest.*—*Held*, on the sum ascertained as the assets, less the collection charges, derived each year from the estate, interest at six per cent. per annum should be allowed, to be calculated on each year's mesne profits up to the date of the decree of the lower Court. **HURRODURGA CHOWDHRAIN v. SHARAT SOONDEY DABIA**

[I. L. R., 4 Cal., 674; 3 C. L. R., 517]

60. ——— **Mortgage.**—*Agreement to take profits of property under deed of usufructuary mortgage in lieu of interest.*—*Interest until possession.*—Where a deed of usufructuary mortgage pro-

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Mortgage—continued.**

vided that the mortgagee should take the profits of the property mortgaged in lieu of interest, and was silent as to any interest should the mortgagee not obtain possession, it was held that the mortgagee, who had remained in possession of the property for the stipulated term, was not entitled to retain possession in order to recoup himself for the loss of interest during the time in which he did not obtain possession. **DULLI v. BAHADUR** **7 N. W., 57**

61. ——— Payment into Court.—Payment in satisfaction of decree.—When a payment is made into Court by a judgment-debtor in full satisfaction of the decree, but which the Court accepted and retained as a payment on account, the judgment-creditor can have no right to claim interest upon the whole amount of his decree. The Court executing the decree has a discretion in allowing interest which will not be interfered with in special appeal. **PARBENATH MUKHOPADHYA v. KISTO MOHUN SAHA** [**3 B. L. R., Ap., 105; 12 W. R., 50**]

62. ——— Interest on decretal money in Court.—Whether interest on decretal money is payable up to the date that it was deposited in Court by the judgment-debtor, or up to the date on which the decree-holder applied to get it from the Court, will depend on whether the decree-holder had any notice of the money being so deposited to his credit. **KALBE DASS GHOSH v. PURAN KOOMAR BIBE** **16 W. R., 304**

63. ——— Refusal to deposit money in Court.—The defendant was invited, by an injunction issued upon him in another suit, to deposit in Court the money admittedly due under the bonds now sued upon, but having refused to do so, was held liable to pay interest from the date of that injunction. **RAM DASS GOSSAMER v. PROSUNNO MOYEN DOSSEE** **16 W. R., 297**

64. ——— Payment in satisfaction of decree.—Payment subject to objection.—A judgment-debtor, who wants to be released from the claim of his creditor must pay the money covered by the decree into Court to the credit of the decree-holder unconditionally. If he chooses to make a protest, the creditor is not bound to take the money out subject to any liability which may arise as the consequence of such protest. *A.* got a decree against *B.* for a sum of money the balance of an account. *B.* deposited the amount of the decree in Court, objecting that **Rs. 9,000**, part of that sum, should not be paid out to *A.*, on the ground that he had appealed as to three items of the account which covered that amount. The lower Court paid no attention to the objection, but did not formally disallow it, and *A.* declined to take the **Rs. 9,000**. *B.*'s appeal having been dismissed, *A.* applied for the **Rs. 9,000**, and got it. He then applied for interest thereon during the time it had been deposited in Court,—*Held* that he was entitled to it, for it was owing to *B.*'s act that *A.* had been deprived of the money

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Payment into Court—continued.**

during the period for which he claimed interest. **RAJENDRA KISHORE SING v. PRESHAD SEN** [**2 C. L. R., 183**]

65. ——— Principal and agent.—Agent retaining money until required to pay.—Fraud.—An agent retaining his principal's money, which he has not been required to pay, should not ordinarily be required to pay interest; but if his conduct has been fraudulent, he should be charged with interest. **MONOHUR DOSS v. SITUL PRESHAD** [**23 W. R., 325**]

66. ——— Profits of business.—Rate of interest on decree for profits of business.—In the absence of accounts or other evidence to show the profits of business in a suit where a share of money representing the capital of the business was decreed to the plaintiff, interest was awarded at 12 per cent. per annum. **HEERUN v. BIBE MARIUN** [**14 W. R., 87**]

67. ——— Profits of watan.—Decree for arrears of profits of share in a watan.—Where the plaintiff sued to establish a right to share in a watan and to recover a portion of the profits thereof for seven years, and obtained a decree for the arrears, it was held that there was no law by which interest on such arrears could be awarded also. **GUNDO ANANDRAY v. KRISHNARAY GOVIND** . **4 Bom., A. C., 55**

68. ——— Refund of excess payments.—Interest on refund of excess amount under decree.—While a special appeal was pending the decree-holder took out execution, and realised a sum in satisfaction of his whole decree. The decree having been modified, and the amount decreed reduced, the judgment-debtor applied for a refund of the excess payment, and this was awarded to him with interest. *Held* that interest was rightly awarded. **WOOMA SONDEREE BURMONIA v. GOOROO PRESHAD ROY** [**15 W. R., 74**]

69. ——— Suit for refund of excess rents.—Where rent at an enhanced rate was decreed by the High Court in 1863, but the decree, as far as the enhanced rate was concerned, was reversed by the Privy Council in 1873, and between the two dates other decrees at the enhanced rate had been obtained based on the original one of 1863,—*Held*, in a suit for a refund of the excess rents, that, under the circumstances, no interest would be given. **KALICHURN DUTT v. JOGESH CHUNDER DUTT** [**2 C. L. R., 354**]

70. ——— Enforcing payment of rent after agreement to allow deduction.—Where a lessor who has agreed to deduct rents in case of his special appeal being unsuccessful, compels payments of such rents notwithstanding a decree of the lower Court being against him, he must pay interest if the result of the litigation shows that he had no right to the money. **TARAMONER DASSEE v. MAOKINTOSH** **9 W. R., 272**

INTEREST—continued.**1. MISCELLANEOUS CASES—continued.****Refund of excess payments—continued.**

71. ———— *Refund of amount wrongly levied in execution of decrees.—Civil Procedure Code, ss. 244, 588.*—The Court has power to award to a successful appellant interest upon an amount found on appeal to have been improperly levied in execution of a decree. *AYYAVAYAR v. SHASTRAM AYYAR* . . . **I. L. R., 9 Mad., 508**

72. ———— *Costs.—Reversal of decrees.—Refund of costs recovered by execution.—Interest.*—A successful appellant in an appeal to the High Court applied, in execution of his decree, for a refund of a sum of money which he had paid to the respondent, by way of costs with interest thereon, in execution of the lower Court's decree. He further applied for interest on the refund claimed, at the rate of Rs 6 per cent. per annum. The respondent objected to paying interest on the refund. *Held* that the appellant was entitled to the interest claimed on the refund of costs. *Forester v. The Secretary of State for India in Council, I. L. R., 8 Cal., 161*, referred to. *RAM SAHAI v. BANK OF BENGAL*
[**I. L. R., 8 All., 262**]

73. ———— *Unliquidated damages.—Right to interest.*—Interest should not be awarded on unliquidated damages. *FRAMJI HARMASJI v. COMMISSIONER OF CUSTOMS* . . . **7 Bom., A. C., 89**

And see *CHAKU MODAN ISANA v. DULLABH DWARAKA*
[**9 Bom., 7**]

2. CASES UNDER ACT XXXII OF 1839.

74. ———— *Act XXXII of 1839.—Bond.—Interest not specified.—Stat. 3 & 4 William IV., c. 42, s. 28.*—By Act XXXII of 1839, extending the provisions of the Statute 3 & 4 William IV., c. 42, s. 28, to India, it was enacted "That upon all debts or sums certain payable at a certain time, the Court before whom such debt or sums may be recovered may, if it shall think fit, allow interest to the creditor, at a rate not exceeding the current rate of interest, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time." An instrument in the nature of, though not strictly, a bond, was executed in 1833, which provided for the liquidation of the amount therein specified by instalments, but no provision was made for the allowance of interest. The condition for payment not having been performed, *Held*, in an action brought in 1849 to recover principal and interest upon the bond, that the Act XXXII of 1839 was retrospective in its operation and authorised the allowance of interest, although it was not provided for in the bond. *BOMMARAUZE BAHADUR v. RANGASAMY MUDALI*
[**6 Moore's I. A., 232**]

75. ———— *Notice.—Previous suit between the parties.*—Where, in order to entitle the plaintiff to charge interest, a notice by law is required to be served upon the defendant, the existence of a previous litigation upon the same subject.

INTEREST—continued.**2. CASES UNDER ACT XXXII OF 1839—continued.****Act XXXII of 1839—continued.**

matter is a sufficient notice. *MOFOKHURL MOOLK MUSSEERUD DOWLA SYED SUFDAR ALLY KHAN v. MACKINTOSH* . . . **2 Hay, 123**

76. ———— *Effect of Act.—Payments of revenue by one co-sharer.*—Act XXXII of 1839 provided that the Court may allow interest on sums of money payable by virtue of a written instrument, at a certain time, or, "if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed." *Held* that the statute had not the effect of restraining the power of the Court to allow interest in other cases, in which interest was allowed before the Act. Therefore interest may be allowed on payments of revenue made by one co-sharer on behalf of others, notwithstanding no demand of interest may have been made before suit. *GOLAM AHMED SHAH v. BEHARY LAL*
[**Marsh., 239:1 Hay, 500**]

77. ———— *Interest prior to suit.*—Interest cannot legally be awarded prior to suit in cases governed by the provisions of Act XXXII of 1839. *ABDOOL KUREEM v. MEA JAN*
[**6 W. R., 288**]

78. ———— *Suit for contribution.*—Interest may be allowed in a suit for contribution, although no demand for interest may have been made before suit. *NULLIT BISWAS v. PROSUNNO MOYEE DOSSEN* . . . **17 W. R., 179**

79. ———— *Interest prior to suit.—Demand.*—In the absence of a demand in writing interest up to the date of suit cannot be awarded on sums not payable under a written instrument of which the payment has been illegally delayed. *KISARA RUKKUMMA RAO v. CRIPATI VIYANNA DIKSHATULU* . . . **1 Mad., 369**

80. ———— *Promissory note payable on demand.*—In an action for the balance due on a promissory note payable on demand, the Court refused to allow interest, there being no proof of a demand in writing. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. WILSON*
[**1 R. L. R., O. C., 41**]

81. ———— *Interest from demand of payment.*—In a suit to recover (with interest) money which had been advanced as part of the consideration for the purchase of land under a contract which defendant broke, the Court, in decreeing the claim, awarded interest from the time when the demand of payment was made, i.e., from the date the suit was instituted. *PATSAHRE DOBAIN v. HUREDO NARAIN SAHOO* . . . **24 W. R., 457**

82. ———— *Damages.—Wrongful refusal to pay.*—Interest is given under Act XXXII of 1839 by way of damages, on the ground that a debtor has wrongfully refused to pay;

INTEREST—continued.**2. CASES UNDER ACT XXXII OF 1839—continued.****Act XXXII of 1839—continued.**

but where there is no hand to receive payment, and to give a complete discharge, there can be no wrongful refusal. **RAJNARAIN BOSE v. UNIVERSAL LIFE ASSURANCE COMPANY**

[I. L. R., 7 Calo., 594; 10 C. L. R., 561]

83. ——— Wagering contract in opium.—Discretion of Court.—Act XXXII of 1839 (authorising the allowance of interest in certain cases) does not affect debts contingent in amount and time of becoming due; e.g., a wagering contract for the payment of the excess over the average price of opium at the next ensuing public sale. *Quere*,—Whether the discretion of the Court, in allowing or refusing to allow interest in cases within that Act, is liable to review or appeal. **JUGGOMOHUN GHOSH v. MANICK CHUND**

[4 W. R., P. C., 8; 7 Moore's I. A., 263]

3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED.**(a) SUITS.**

84. ——— No rate of interest proved.—*Discretion of Court.*—Where no rate of interest is proved, the rate is in the discretion of the Court. After date of decree the Court rate is six per cent. **GREGORY v. DULOOK ROY** . . . Cor., 9

85. ——— Rate of interest.—Interest up to date of filing of plaint.—Interest at the stipulated rate should only be allowed up to the date of the filing of the plaint; afterwards at the Court rate of six per cent. **ANDERSON v. SRINIMUNTO. ANDERSON v. RAJNARAIN DOSS** . . . Cor., 3

86. ——— Interest before and after decree.—Suit for arrears of maintenance.—A., on behalf of her infant son *B.*, contracted with *C.* that he should be allowed, for the maintenance of her daughter whom he was about to marry, land situate at *X.* that should yield annually Rs900. *B.* after coming of age contracted at *Y.* to pay *C.* the annual allowance, and ratified the contract which had been made by his mother. *Held*, in a suit for recovery of certain of the yearly payments, that the Court might decline to allow interest on the arrears found to be due prior to the commencement of the suit, there being no stipulation in the contract for interest, and might award interest on the amount decreed from the commencement of the suit to the date of the decree and interest upon the aggregate amount and upon the costs, from the date of the decree until payment. **KISHENKINKUR GHOSH v. BORADAKANTH ROY**

[Marsh., 533; 2 Hay, 656]

87. ——— Discretion of Court.—Interest at the stipulated rate, no matter how usurious, will be awarded down to decree. The rate at which subsequent interest is to be awarded is entirely in the discretion of the Court. If a plaintiff has contracted to receive interest at twelve per cent. only that rate will be carried down to decree, but

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(a) SUITS—continued.****Interest before and after decree—continued.**

should he have contracted for a higher rate, six per cent. only will be allowed. **DRUNPUT SINGH DOGARE v. GOLAM HADEE** . . . 2 Hyde, 106; Cor., 12

88. ——— Interest not mentioned in decree.—A plaintiff cannot recover more than is clearly given to him by the decree, either in express terms or by necessary inference. Where the plaintiff prayed for interest up to the date of the suit, together with subsequent interest, and the decree purported to be an award in accordance with the prayer of the plaint,—*Held* that the plaintiff was not entitled to interest subsequent to the date of the decree. **PRABHULANADHO PILLAY v. PONNUSWAMY CHETTY** . . . 6 Mad., Ap., 1

89. ——— Interest between date of filing of plaint and decree.—Date of making and date of satisfaction of decree.—The compensation due to a plaintiff for the delay which must ensue between the date when the plaint is filed and the date when the decree can be reasonably expected to be satisfied is, as a general rule, best and most simply estimated by a uniform rate of interest upon the total amount decreed, reckoned from the date of the decree. **DOORGA DUTT SINGH v. BUNWARRE LALL SAHOO** . . . 19 W. R., 34

90. ——— Interest where no rate is agreed on after certain time.—Reasonable rate.—Discretion of Court.—In a suit to recover a sum of money due on an agreement under the term of which interest for fifteen days only was payable at the rate of one rupee *per diem*,—*Held* that, as no rate was agreed upon after the expiration of the fifteen days, the Court had power to fix a reasonable rate of interest subsequent to that time. **IN THE MATTER OF MOIZOODDY SHAIK** . . . 14 W. R., 450

91. ——— Rate of interest after suit where rate before is stipulated.—Assessment of rate.—The Sudder Court having reduced the rate of interest allowed by the Zillah Judge, before the commencement of the suit, from 12 per cent. to 10 per cent., the rate at which the account current between the parties bore interest, it was held by the Privy Council that the same consideration should have determined the rate of interest to be allowed from the date of suit; and that the amount of this should also be calculated at 10 per cent. *per annum*. **MIETUNJOY CHUCKREBUTTY v. COCHERANE**

[4 W. R., P. C., 1; 10 Moore's I. A., 239]

92. ——— Interest from decree to date of realisation.—Decree under s. 53, Act XX of 1866.—Interest from the date of decree to date of realisation cannot be awarded by a decree under section 53, Act XX of 1866. **MAHOOT CHUND v. MAHTAB** . . . 3 Agre, 318

93. ——— Further interest ordered by Court under Act XXIII of 1861.—When

INTEREST—continued.**8. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(a) SUITS—continued.****Interest from decree to date of realisation—continued.**

the Court orders further interest under Act XXIII of 1861, section 10, it is to be from the date of the decree to the date of the payment of the principal sum adjudged, and not for a limited period. *RAMASWAMI AYYAN v. APPAVAIYAN* . . . 1 Mad., 211

(b) DECREES.**94. ———— Decree not giving interest.**

—*Decree for mesne profits.*—Interest on mesne profits cannot be awarded for the period previous to the ascertainment where the decree does not give interest on mesne profits. *HURO GOBIND BHUKUT v. DEGUMBURE DEBIA* . . . 9 W. R., 217

95. ———— Decree for mesne profits.—Act XXIII of 1861, s. 10.—Where a decree of the Privy Council ordered possession with mesne profits but without interest,—*Held* that the decree did not interfere with the power of the Judge who executes it to award interest under section 10 of Act XXIII of 1861, on the aggregate sum adjudged, and costs from the date of decree to date of payment. *AHMED REZA v. KHUJOORUNNISSA* [15 W. R., 469]

96. ———— Decree for mesne profits.—Execution of decree.—Act XXIII of 1861, s. 11.—When a decree is silent as to interest, the Court executing the decree has no power to award interest. Act XXIII of 1861, section 11, refers only to questions of amount of interest or mesne profits which are left open and not determined by the decree. *MOSOODUN LALL v. BEKAREE SINGH* [B. L. R., Sup. Vol., 602; 6 W. R., Mis., 109]

ABDUL ALI v. ASHRUFFAN [7 B. L. R., Ap., 80, note; 14 W. R., 62]

JARDINE, SKINNER & Co., v. SHAMA SOONDURRE DEBIA . . . 10 W. R., 60

JOYKISSEN BOSE v. WISE [W. R., 1864, Mis., 87]

BECHARAM DOSS v. BROJONATH PAL CHOWDREY [9 W. R., 369]

97. ———— Power of Court executing decree.—When a decree does not provide for the payment of interest, it is not competent to the Court executing the decree to add to it by giving interest. *KUPPA AYYAR v. VENKATARAMANA AYYAR* . . . 3 Mad., 421

LEELANAND SINGH v. JOY MUNGAL SINGH [15 W. R., 335]

LEELANAND SINGH v. RAM NARAIN SINGH [15 W. R., 415]

NUBO KISHORE MOJOMDAR v. ANUND MOHUN MOJOMDAR . . . 17 W. R., 19

INTEREST—continued.**8. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(b) DECREES—continued.****Decree not giving interest—continued.**

JEWAN LALL MAHATAB v. DOORGA DUTT SINGH [20 W. R., 477]

MAHOMED YAKOOB v. MAHOMED ZUHOORUL HAQ [22 W. R., 533]

KNAYET ALI v. MAHOMED ZUHOORUL HAQ [22 W. R., 534]

Contra, LUCHMEE NARAIN v. SHUDASHO SINGH [5 W. R., Mis., 12]

where it was held that interest runs on sums decreed as a matter of course, unless a specific order is recorded to the contrary.

This case must be considered, however, as now overruled.

98. ———— Interest allowable by Court executing decree.—A Court executing a decree can award interest, from date of decree to date of payment, on the amount decreed to be paid by the judgment-debtor to the decree-holder, if the Court which passed the decree made no order on that point. *BENB CHUNDER JOORAJ v. RAM COOMAR DHUR* . . . 6 W. R., Mis., 26

99. ———— Court executing decree.—Where a decree ordering payment by instalments does not provide for the payment of interest, the Court executing it is bound to refuse giving interest upon objection being taken thereto, even though on particular occasions interest has been claimed and allowed. Where interest is objected to in such a case, and the decree-holder is subjected to serious loss by delay in satisfying his claim, he is entitled to proceed at once against any property which may be liable under the decree to attachment and sale on default of payment of any of the instalments. *SURNO MOYEE DOSSER v. KISHEN KOOMAREE* [14 W. R., 324]

100. ———— Execution of decree.—Suit for damages.—Where a decree is silent as to future interest, interest cannot be recovered by proceedings in execution of the decree, but it may be recovered as damages by a separate suit. *SETH GOKUL DAS GOPAL DAS v. MURLI* [I. L. R., 3 Cal., 602; 2 C. L. R., 156; I. R., 5 I. A., 78]

NILAMBUR SEIN v. PITAMBUR SEIN [5 W. R., Mis., 28]

101. ———— Verbal promise to pay interest.—Execution of decree.—A judgment-debtor, in consideration of time being allowed him, promised in open Court, through his vakeel, to pay interest to his creditor, although the decree did not specifically award interest. *Held*, by the majority of the Court, that the debtor was bound by that promise, and that execution could issue as well for the sum decreed as for the interest promised. *SREESH-TERDHUR SHAHA v. WOOMESHNATH ROY* [5 W. R., Mis., 1]

INTEREST—continued.**8. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(b) DECREES—continued.****Decree not giving interest—continued.**

102. ———— *Postponement of sale by consent on condition of payment of interest not decreed.—Condition enforced.*—A judgment-debtor having applied to the Court to postpone the sale of his property, so as to enable him to raise money by sale or mortgage to satisfy the decree, the creditor consented to the adjournment, on the debtor undertaking to pay interest from the date of suit, which was not provided for by the decree, and the Court by order postponed the sale accordingly. *Held* that, under the circumstances, it was to be inferred that the Court approved of and sanctioned the condition, and that the condition could be enforced in execution of the decree. **LAKSHMANA v. SURIYA BAI** **I L. R., 7 Mad., 400**

103. ———— *Decree not specifying rate of interest.*—Where a decree did not specify the rate of interest, *Held* that the Court ought not to have allowed a higher than the usual Court rate, *namely*, 12 per cent. **SOOBUDRA BEBEE v. SHEO CHURN LALL** **7 W. R., 375**

104. ———— *A decree directed that from the original cause of action to date of suit, and from date of suit to date of decision, interest should be given at 12 per cent.; and from date of decision to date of liquidation, interest should be given without specifying the rate. The Judge gave 12 per cent. for this period, and an appeal from his order, on which it was contended that no rate being specified, no interest could be given, was dismissed.* **LALUN MANI v. BEHARI LAL MOOKERJEE** [**7 B. L. R., Ap., 30**]

105. ———— *Although the decree in this case did not specify the rate of interest before or after the decree, yet as it appeared that, in calculating the amount then due, the Court gave 12 per cent., and that that was the usual rate, Held* that the intention of the Court, when it passed the decree, was to give the same rate. **ABDOULLAH v. REASUT HOSSEIN** **17 W. R., 414**

106. ———— *Alteration of rate of interest given by decree.—Rate where no rate is specified.*—Where a decree awarded a certain sum which was calculated in the schedule, plus costs and interest, the Court executing was held to have committed an error in altering the amount somewhat by reducing the rate of interest during the pendency of the suit. The same Court was pronounced not to have done wrong in estimating the interest, the rate of which was not specified, at a rate which, under the circumstances of the case, it thought reasonable. **RUGHONUNDUN SINGH v. ABOOTT** . **19 W. R., 46**

107. ———— *Court rate.*—Where a decree was given for a certain amount with interest, the rate not being specified, the High Court

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(b) DECREES—continued.****Decree not specifying rate of interest—continued.**

considered itself bound by the authorities to affirm an order made by the Court executing the decree, allowing the Court rate usual at the time of the making of the decree. **MADHUB LAL KHAN v. NOYAN GHOSH** **6 C. L. R., 231**

108. ———— *Decree of Privy Council, Interest on.—Interest on costs.*—Where a decree of the Privy Council gives interest, but does not clearly specify the rate, the Court should ascertain, if possible, from the other parts of the decree itself, or from other documents which may be read in conjunction with the decree, what rate was intended to be given. **AMBEROONNISA KHATOON v. MAHOMED MOZAFFER HOSSEIN** **18 W. R., 103**

(c) CONTRACTS.

109. ———— *Wagering contract.—Contract without stipulation as to interest.—Mercantile usage.—Act XXI of 1848.*—Neither by the English nor the Hindu law, unless there be mercantile usage, can interest be imported into a contract which contains no stipulation to that effect. In an action on contracts known as *tajes mundee chitties*—opium wager contracts (before the passing of Act XXI of 1848, which prohibited such gambling contracts)—the plaintiff claimed interest on the sum recovered. *Held* that, as there was no stipulation as to interest in the contract, or satisfactory evidence of mercantile usage at Calcutta to import interest into the contract, the interest claimed could not be allowed. **JUGGOMOHUN GHOSH v. KAISERCHUND** . **9 Moore's I. A., 256**

See JUGGOMOHUN GHOSH v. MANIOX CHUND [**4 W. R., P. C., 8; 7 Moore's I. A., 263**]

110. ———— *Contract rate of interest.—Power of Court to withhold interest.*—When by the terms of a contract money is to bear interest, interest is as much payable by virtue of the contract as the principal, and the Court has no power in such a case to withhold interest. **BUNWARRE LALL SAHOO v. MOHESHWER SINGH**

[**Marsh., 544; 2 Hay, 644**]

KOTOO v. KO PAY YAH **6 W. R., 255**

111. ———— *Obligation of Court to award such rate.*—A Court is bound to enforce an agreement between the parties as respects the amount of interest to be paid upon a bond, instead of limiting a claim for accumulated interest to a sum not exceeding the principal. **KALIOA PRASAD MISSEER v. GOBIND CHUNDER SEIN**

[**2 W. R., S. C. C. Ref., 1**]

112. ———— *Act XXVIII of 1855.—Inequitable contracts.*—The provision contained in Act XXVIII of 1855, that any rate of in-

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(c) CONTRACTS—continued.****Contract rate of interest—continued.**

terest which the parties may have agreed upon shall be awarded in no way prevents the Courts in India which administer both law and equity from examining into the character of agreements between parties holding relations to each other which enables one to take advantage of the other, and from declining to enforce such agreement when unfair and extortionate. *VINAYAK SADASHIV VOZE v. RAGHI*

[4 Bom., A. C., 202]

118. ————— *Rate of interest on bond up to decree.—Act XXVIII of 1855, s. 2.—Civil Procedure Code, 1877, s. 209.*—The contract rate of interest must be allowed up to date of decree in accordance with Act XXVIII of 1855, section 2. The Civil Procedure Code, section 209, does not expressly refer to suits in which interest has been contracted for, and does not repeal the former Act. *BANDABU SWAMI NAIDU v. ATOHAYAMMA*

[I. L. R., 3 Mad., 125]

114. ————— *Setting aside transaction by guardian of minor.—Interest on loan.*—In setting aside an ikrarnamah and sale as being contrary to the interests of a minor and made by the guardian, a Hindu lady, under circumstances which showed that she had been imposed upon, interest was allowed on a sum of Rs26,000 which had been actually advanced, at the contract rate of six per cent. in lieu of five per cent. awarded by the Sudder Court, and in preference to the current Court rate of twelve per cent. *LALLA BUNSEKHUR v. BINDHESHEEN DUTT SINGH*

10 Moore's I. A., 454

115. ————— *Subsequent interest.*—Where a Civil Court awards interest under an admitted contract, it is bound to award it at the stipulated rate up to the date of decree; but for any time after that date it has power to exercise its own discretion as to the rate of interest to be awarded. *BHUGWAN DOSS v. TEKAIT TEAN NARAIN DEO*

[23 W. R., 309]

116. ————— *Interest after due date of bond.—Date of refusal of payment.*—In a suit upon a bond, when the genuineness of the bond and the defendant's liability under it are clearly established, the plaintiff is entitled to interest from the time the defendant declined payment of the sum due upon the bond. *GUNGA BISHUN TEWARY v. ROY MOHUN LALL MITTAR*

W. R., 1864, 291

117. ————— *Discretion of Court.*—When a bond is silent as to any interest to be allowed after the due date of the bond, it is in the discretion of the Court to fix the amount of interest, if any, to be paid from the due date of the bond to the date of the commencement of suit. *SITANATH BOSH v. MATHURA NATH ROY*

[2 B. L. R., Ap., 10; 11 W. R., 68]

JOYRAM GOSSAMER v. NOBIN CHUNDER DOSS

[25 W. R., 318]

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(c) CONTRACTS—continued.****Interest after due date of bond—continued.**

118. ————— *Bond under s. 52, Act XX of 1866.*—When a bond under section 52, Act XX of 1866, is enforced on a decree, no interest is to be allowed on it, if the bond does not provide for interest after the date on which the debt was payable. *KALGOORAM BABOO v. DOORGANATH TALOOKDAR*

10 W. R., 175

119. ————— *Interest after filing of plaint.—Interest at rate stated in bond.—Discretion of the Court.—Civil Procedure Code (Act XIV of 1882), s. 209.*—Interest after date of suit is in the discretion of the Court, notwithstanding that a fixed rate of interest is mentioned as payable "up to realisation" in the bond sued upon. *MANGITRAM MAHWARI v. DHOWTAL ROY*

[I. L. R., 12 Calc., 569]

120. ————— *Provision for interest between due date and date of enforcement.*—Where a registered bond provided for payment of interest between the date upon which the bond fell due and the date upon which enforcement was applied for, the bond was construed strictly against the debtor. *RAM DASS GOSSAMER v. PROSONOMOY DOSSER*

18 W. R., 297

121. ————— *Discretion of Court.*—In a suit brought to recover the principal and interest due upon a written security given for the payment of the principal money on a day specified, with interest at a stipulated rate up to such day, the Court may, in its discretion, award interest on the principal sum from due date at such rate as it thinks fit, and is not bound to award such interest at the stipulated rate. The principle laid down in *Cooke v. Fowler, L. R., 7 H. L., 27*, followed. *DREEN DOYAL LALL v. HET NARAYAN SINGH*

[I. L. R., 2 Calc., 41]

S. C. DREEN DOYAL LALL v. CHOJA SINGH

[25 W. R., 189]

122. ————— *Failure of form—on suit on bond for want of jurisdiction.*—Where in a previous suit on a bond, which suit was lost on account of want of jurisdiction, the plaintiff sued for a specific sum, and for interest as from a certain date, he was declared, in a subsequent suit instituted by him on the same bond, entitled to interest on the bond only from the date from which he sued for it in the first suit, to the date of the present decree of the Judicial Committee. *NARAIN DASS v. ESTATE OF THE EX-KING OF DELHI*

10 W. R., P. C., 55

S. C. LALLA NARAIN DOSS v. ESTATE OF EX-KING OF DELHI

11 Moore's I. A., 277

123. ————— *Limitation in suit on bond.*—On mortgage bonds, dated 1832, the Court allowed interest only for six years; following *Vital Mahde v. Daud Valad Muhammad Hussan*,

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(c) CONTRACTS—continued.**

Interest after due date of bond—continued.
6 Bom., A. C., 90, and Narayan v. Satvaji, 9 Bom., 83. NARAYAN DESHPANDE v. RANGUBAI
[I. L. R., 5 Bom., 127]

124. ————— Mortgage-bond.
—Agreed rate of interest.—In a suit on a mortgage-bond the plaintiffs are entitled to recover the agreed rate of interest without any deduction. **FUTREHMA BEGUM v. MOHAMED AUSUF**
[I. L. R., 9 Cal., 309]

125. ————— Measure of damages.—A suit was brought in 1884, upon a hypothecation-bond executed in April 1876, in which the obligors agreed to repay the amount borrowed with interest at Rs. 8 per cent. per mensem, in June of the same year. There was no provision as to payment of interest after due date. The bond specified certain property as belonging to the obligors and contained the following provision:—"Our rights and property in the aforesaid taluka Rajapur shall remain pledged and hypothecated for this debt." Interest was claimed in the suit at the rate of Rs. 8 per cent. per mensem as well for the period after as for the period before the due date of the bond. **Held** that, although cases might arise in which a jury or a Judge might refuse to give a plaintiff any interest, *i.e.*, damages, *post diem*, at all, the circumstances would have to be of a very exceptional character, as, for example, where the interest contracted to be paid before due date was exorbitant and extortionate. **Cooke v. Fowler, L. R., 7 H. L., 27**, referred to. **Held** that, in determining the amount of damages, the question whether the plaintiff has unnecessarily delayed bringing his suit, and so allowed his claim to mount up to a sum far in excess of the principal money originally advanced, may be taken into consideration as a reason for not making the original rate of interest the basis on which to assess such damages. **Juala Prasad v. Khuman Singh, I. L. R., 2 All., 617**, referred to. The principle upon which the obligee of the bond may recover interest after due date does not rest upon any implied contract by the obligor to pay such interest, but proceeds upon the breach of contract which has taken place by reason of the non-payment on due date, and the reasonable amount to which the obligee is entitled for such breach. The decision of the question by what standard the damages should be measured must depend in each case upon its special circumstances. **BISHEN DAYAL v. UDIT NARAIN**
[I. L. R., 8 All., 486]

126. ————— Interest otherwise, than at contract rate.—Where a debtor by his bond stipulated to pay interest at 12 per cent. per annum up to the time fixed for payment, but the money remained unpaid for a long time, the High Court refused to interfere with the decree of the Lower Court awarding plaintiff interest at the rate stipulated for up to the time fixed for payment, and a lower rate

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(c) CONTRACTS—continued.**

Interest after due date of bond—continued.
afterwards. GOSSAIN LUCHMEH NARAIN POOREN v. TEKAIT HET NARAIN SINGH . 18 W. R., 322

127. ————— Power of Court to alter contract as regards interest.—**Bond payable by instalments.**—**Civil Procedure Code (1859), s. 194, (1877) s. 210.**—Neither Act VIII of 1859, section 194, nor Act X of 1877, section 210, confers any authority on the Courts to relieve a contracting party from such an express stipulation in a bond payable by instalments, as to the consequence of default in punctual payment of the instalments. A debt being presently due, an agreement to pay it by instalments, with a stipulation, that on default the creditor may demand immediate payment of the whole balance due with interest, is not to be relieved against in equity. Such a stipulation is not in the nature of a penalty, inasmuch as its object is only to secure payment in a particular manner. The defendant executed to the plaintiff a bond payable by instalments, and expressly stipulating for the payment of the whole amount on failure to pay any instalment on the day fixed. He paid the first instalment, but made default in paying the second, which fell due on the 3rd August 1878. On the 20th August plaintiff sued to recover the whole balance due on the bond. Defendant admitted the bond, but pleaded tender of the amount of the second instalment soon after the due date, and prayed for payment by instalments without any interest. The first Court passed a decree in the plaintiff's favour for the amount claimed with costs, but ordered defendant to pay Rs. 100 and the costs at once, and the balance by yearly instalments of Rs. 100 each, with interest at 6 per cent. till payment. The District Judge, on appeal, affirmed the decree, with a slight variation as to interest, which he directed the defendant to pay on overdue instalments only. **Held**, by the High Court on second appeal, that neither of the lower Courts had jurisdiction, without the consent of the parties, to substitute, for the contract made by them, terms which the Court preferred. **RAGHO GOVIND PARANJPE v. DIPCHAND . I. L. R., 4 Bom., 96**

128. ————— Power of Court to alter rate of interest.—**Civil Procedure Code Act (1859), s. 194.**—In exercise of the discretion given by section 194 of the Code of Civil Procedure (Act VIII of 1859), the Court of first instance in a suit on a mortgage-bond gave a decree to the plaintiff making the amount awarded payable by instalments, but gave no interest after the institution of the suit. The Appellate Court amended the decree by awarding interest from the institution of the suit at six per cent. per annum, the rate originally contracted for being twenty-four per cent. per annum. **Held** that, although the stipulated rate was properly awardable, the award of the lower rate was not illegal or beyond the competence of the Court below,

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(c) CONTRACTS—continued.**

Interest after due date of bond—continued.
with whose discretion the High Court will not interfere. *CARVALHO v. NURBIBI*

[I. L. R., 3 Bom., 202]

But see *JAFREE BEGUM v. AHMED HOSSEIN KHAN*
[I Agra, 270]

129. ——— Exorbitant rate.—Discretion of Court to give or not the contract rate.—When the rate of interest stipulated for in a bond is exorbitant, and there is no express understanding that the interest is to continue at the same rate after the expiration of the period fixed for repayment, a Court need not assume that the parties are bound by contract to that rate after such period. *MAHOMED HOSSEIN v. TUQERBROODEN*

[15 W. R., 284]

130. ——— Discretion of Court to give or not the contract rate.—Where a party borrowing money entered into a bond stipulating to pay Rs 24 per cent. per annum as interest until the whole debt, principal and interest, was paid off; and if the whole was not paid within the time mentioned, that the bond should be enforced as a registered deed,—*Held* that the rate of interest was not a question of discretion, but must be paid at the rate stipulated. *REASUT HOSSEIN v. JUSMUNT ROY*

15 W. R., 396

131. ——— Compound interest.—Contract rate.—Penalty.—Where a stipulation for compound interest is included in a contract, the compound interest is not a penalty but a matter of contract, and a Court enforcing the contract in a decree should give the compound interest also. *LAND MORTGAGE BANK OF INDIA v. RADHA KRISHNA DUTT*

25 W. R., 323

132. ——— Mortgage-bond.—Compound interest from co-sharer enforcing pre-emption.—*B.* stipulated in the instrument of mortgage to pay the interest annually, and in case of default to pay compound interest. The mortgage was afterwards foreclosed, and *A.*, the mortgagee, sued for and obtained possession. *S.*, a co-sharer, sued for and was held entitled to pre-emption in respect of a share in the property. *Held, per STUART, C. J., SPANKIN, J., and STRAIGHT, J.*, that, inasmuch as *B.* would have been obliged to pay compound interest had he desired to redeem the mortgaged property, *A.* was entitled to receive from *S.* compound interest up to the date of foreclosure. *ALU PRASAD v. SUKHAN*

[I. L. R., 3 All., 610]

133. ——— Discretion of Court.—Reasonable rate of interest.—*G.* gave *B.* a bond for the payment of certain money within a certain time, with interest at the rate of 1½ per cent per mensem, in which he agreed that, in case of default, the obligee "should be at liberty to recover the principal money and interest from his person and

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(c) CONTRACTS—continued.**

Interest after due date of bond—continued.

property" and mortgaged "his four-anna share in mauza K. until payment of the principal money and interest." *Held* that the bond contained an express contract for the payment of interest after due date at the rate of 1½ per cent. per mensem, and that such contract was enforceable. *Semble*,—That, where there is no express agreement fixing the rate of interest to be paid after the date a bond becomes due, an agreement to pay at the rate of interest agreed to be paid before such date cannot be implied, but the Court must determine what would be a reasonable rate to allow. In such a case the rate agreed to be paid before such date may ordinarily be regarded as the rate to be allowed after such date, provided that the rate agreed to be paid before such date is not excessive. *BALDEO PANDAY v. GOKUL RAI*

[I. L. R., 1 All., 603]

134. ——— Damages.

Held, where a bond for the payment of certain money within a certain time did not contain any agreement fixing the rate of interest to be paid after the date it became due, that the question as to the amount of interest to be allowed after that date should be treated as one of damages, and that, having regard to the length of time that had elapsed since the bond ran out (February 1870) to the date on which the suit thereon was instituted (26th November 1878) interest at the rate of 8 annas per cent. per mensem was an equitable rate to allow after the date the bond became due. *Held* also, that but for the plaintiff's *laches* the rate agreed by the defendant to be paid under the bond (one rupee per cent. per mensem) was a reasonable basis on which to estimate the subsequent damages. *JUALA PRASAD v. KHUMAN SINGH*

I. L. R., 2 All., 617

135. ——— Excessive interest.—Upon a contract for the payment, on a day certain, of money borrowed with interest at a certain rate down to that day, a further contract for the continuance of the same rate of interest after that day until actual payment is not to be implied. When, therefore, the agreed rate of interest is excessive and extraordinary, the Court will reduce the rate to a reasonable amount. *NANCHUND HANSEBAJ v. BAPU RUSTAMBHAI*

I. L. R., 3 Bom., 181

136. ——— Covenant to pay at a certain rate.—Obligation of Court to give stipulated interest.—In a deed of mortgage, dated in July 1870, the mortgagors covenanted, among other things, as follows:—"That having repaid the principal amount in the course of three years we shall take back this bond, and we shall continue to pay annually interest on the said amount at the rate of Rs 1-2 per cent. per mensem; that should we in any year fail to pay the amount of interest, it shall, at the close of the year, be consolidated with the principal amount, and we shall pay compound interest at Rs 1-2 per cent. per mensem.....that, in

INTEREST—continued.**3. OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—continued.****(c) CONTRACTS—continued.****Interest after due date of bond—continued.**

the event of non-payment of the principal and interest on the expiration of the appointed time, the mortgagee "shall be at liberty to recover from us the whole amount due to him with interest by means of a law-suit." *Held* that the terms of the bond amounted to a covenant to pay interest at the stipulated rate after the period of three years, so long as the principal remained due; that, the bond containing an express covenant for the payment of interest at that rate, the interest was not affected by the considerations of the reasonableness or otherwise of the rate; and that the mortgagee was therefore entitled to interest up to the date of the decree at the rate of $\text{R}1\text{-}2$ per mensem. *Buldeo Pandey v. Gokal Rai, I. L. R., 1 All., 603*, referred to. **CHHAB NATH v. KAMTA PRASAD . . . I. L. R., 7 All., 333**

4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE.

137. ——— Stipulation for increased interest.—Act XXVIII of 1855, s. 2.—Penalty.—Section 2 of Act XXVIII of 1855 is the law applicable to suits on contracts whereby interest is recoverable, and it applies to such contracts indiscriminately of the creed of the contracting parties. Where it was stipulated in a bond that, on default of the payment of the principal amount together with interest at the rate of $1\frac{1}{2}$ per cent. per mensem within a certain period, interest should be payable at the rate of $6\frac{1}{2}$ per cent. per mensem from the date of the execution of the bond, and that, on default of payment of such interest at the end of any six months, compound interest should be payable at the rate of $12\frac{1}{2}$ per cent. per mensem, the Court, treating the rate of interest agreed to be paid on default as intended as a penalty, came to the conclusion that the rate was so high that it would not be equitable to enforce the penalty, and therefore decreed the principal amount claimed with interest at the rate of $1\frac{1}{2}$ per cent. per mensem. **LACHMAN SINGH v. PIRKHU LALL . . . 6 N. W., 358**

138. ——— Default in payment.—Act XXVIII of 1855.—Penalty.—Where a promissory note stipulated that, in default of payment of principal within three months after date, interest should run at the rate of 75 per cent. per annum, the increased rate was held to be a penalty and relieved against on payment of interest at 9 per cent. per annum notwithstanding Act XXVIII of 1855. *Motoji Ratnaji v. Huen, 6 Bom., A. C., 8*, followed; and *Arulu Mastry v. Wakuthu, 2 Mad., 205*, and *Brojo Kisoro Roy v. Madhub, 17 W. R., 373*, dissented from. **PAYA NAGAJI v. GOVIND RAMJI . . . 10 Bom., 382**

139. ——— Usury.—Act XXVIII of 1855, s. 2.—Liquidated damages.—The plaintiff advanced money to the defendants on an

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

ikrar, by which it was agreed that he was to allow them to draw on him to the extent of $\text{R}20,000$ within three years, the plaintiff to repay himself by having an ijara of the defendants' share in certain property which his loan was to aid them in recovering. A 4-anna share of the profits, after deducting Government revenue and expenses, was to go in payment of interest on the money lent; half of the remaining three-fourths to go towards payment of the principal, and the other half to the defendants. If, at the end of the term, any balance remained due to the plaintiff, the defendants were to pay it with interest at 18 per cent. If the defendants failed to give the ijara, they agreed to pay the amount borrowed with interest at $6\frac{1}{2}$ per cent. per mensem. The plaintiff advanced the money and obtained a receipt therefor from the defendants. The defendants failed in giving the plaintiff the ijara. In a suit brought to recover the sum lent by the plaintiff with interest, the first Court gave a decree for the plaintiff for the sum claimed, with interest at the higher rate stipulated for in the ikrar, viz., 75 per cent. On appeal by the defendants to the High Court the contention was raised that the rate of interest amounted to a penalty which the Court would not enforce, and that the contract was unreasonable and oppressive in character. The Judges differed in opinion, **BROOK, J.**, holding that the contract was inequitable and oppressive, and that, notwithstanding the repeal of the usury laws by Act XXVIII of 1855, the Court was not bound to decree interest at the rate stipulated for by the parties; and **MARBY, J.** (whose opinion prevailed), being of opinion that since the passing of Act XXVIII of 1855, there was no legal restriction on the rate of interest; that the stipulation for interest at 75 per cent. was not a penalty, but an alternative stipulation for interest at a higher rate on the happening of events under which the lender incurred a greater risk, and that the contract should be enforced. *Held* (on appeal under clause 15 of the Letters Patent), that the stipulation in the ikrar for interest at 75 per cent. was not in the nature of a penalty, nor was it an alternative stipulation; it was an estimate by the parties of the damages to which the plaintiff would be entitled in the event of a breach of the contract by the defendants in not giving the ijara. **OMDA KHANUM v. BROJENDRO COOMAR ROY CHOWDREY [12 B. L. R., 451: 20 W. R., 317]**

And on appeal **ZEBONNISSA v. BROJENDRO COOMAR ROY CHOWDREY . . . 21 W. R., 352**

GRISH CHUNDER GUHA v. GOUR CHUNDER DASS [12 C. L. R., 161]

140. ——— Penalty.—Liquidated damages.—Defendant agreed to supply 100 kautlams of jaggery by a specified rate at $\text{R}4\frac{1}{2}$ per kautlam, and received $\text{R}100$ advance. Defendant further agreed that in default he would pay interest at one per cent. per mensem, and nafa at $\text{R}7$ per kautlam. No delivery was made by defendant. In

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

a suit by the plaintiff to recover R7 per kantlam and the interest.—*Held* that the amount sued for was in the nature of liquidated damages which plaintiff had a legal right to enforce, and not a penalty against which the Court would relieve. The doctrines of the English and Roman law upon the subject of penalties and liquidated damages examined. **ADANKY RAMACHANDRA ROW v. INDUKURI APPALARAJU GARU**

[2 Mad., 451]

141. ——— Condition for payment in nature of interest on mortgage.—Unreasonable condition.—Penalty.—A mortgage-deed contained a condition, that if the principal were not repaid by a certain day the mortgage should only be redeemed by payment of one mura of rice for each rupee of the mortgage-money. The mortgagees was in possession under a prior iladarawara mortgage, and rice rose in the market. *Held* that the condition was unreasonable, and such as should not be enforced in equity. **MAILARAYA v. SUBBARAYA BHUT**

[1 Mad., 81]

142. ——— Penalty.—A bond stipulated for payment of principal and interest at one per cent. per mensem within six months from the date of the bond, and in default that the rate of interest should be raised to six and a quarter per cent. per mensem. *Held* that the higher rate of interest was not in the nature of a penalty, and that the plaintiff had a right to enforce payment thereof. **ABULU MASTRY v. WAKUTHU CHINNAYEN**

[2 Mad., 205]

143. ——— Promissory note payable by instalments.—Penalty.—Where a promissory note payable by instalments stipulated for interest at two per cent. per mensem, and in default of punctual payment, that interest be charged at one anna per rupee per mensem from the date of the note, it was held that this increased rate of interest was a penalty which might be relieved from on payment of the lower rate. **RASAJI BIN DAYLAJI v. SAYANA BIN SAGDU**

6 Bom., A. C., 7

MOTOJI BIN RATWADI v. HUSEIN

[6 Bom., A. C., 8]

144. ——— Penalty.—A promissory note, payable two months after date, given for money lent and interest in advance at the rate of 12½ per cent. per mensem, contained an agreement to continue to pay that rate of interest after the due date if the money was not then repaid. *Held* that the high rate of interest so agreed to be paid did not constitute a penalty against which the Courts would relieve. **HAKMA MANJI v. MEMAN AYAB HAJI**

[7 Bom., O. C., 19]

145. ——— Instalments.—Penalty.—Liquidated damages.—*A.* executed an instalment-bond for R1,000 in favour of *B.*, in which he stipulated that from the year 1271 (1864) to 1275

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

(1868), both inclusive, R200 should be paid in the month of Jaishta (May 13th to June 12th) in each year, and that "in the event of any instalment being then due, all the remaining instalments should be deemed lapsed, and the principal should be paid with interest at the rate of 10 per cent. per mensem, from the date of the instalment-bond." The first instalment, which fell due on the last day of Jaishta 1271 (12th June 1864), was paid only on the 13th Falgun of the same year (13th February 1866), other instalments were paid in Jaishta 1272, 1273 (1865, 1866). *B.* accepted payment of these instalments as part of payment of the principal sum due to him, and never made any demand for interest under the terms of the bond. The further instalments due in Jaishta 1274 and 1275 (May 13th to June 12th 1867 and 1868), were never paid. On 13th Kartik 1275 (30th October 1868), *B.* sold the bond and all his interest thereunder to *C.* for R800. On 2nd Jaishta 1276 (14th May 1868), *C.* brought a suit against *A.* for the whole amount of the bond with interest thereon at 10 per cent. per mensem, from the date thereof till the date of suit—namely, R6,099, less the amount R600, which had been realised by *B.* in the three instalments for 1271, 1272, and 1273 (1864, 1865, and 1866). The Judge awarded him only the amounts of the unpaid instalments for 1274 and 1275 (1867 and 1868), namely, R400, with interest from the date of the instalments till date of suit at one per cent. per mensem, in all R488 odd, proportionate costs and interest on all at one per cent. per mensem till date of realisation. On appeal to the High Court by *C.*, *held* that the clause in the bond relied on was a mere penalty clause. The original obligee of the bond having waived the exaction of any penalty, *C.* was not entitled to more than the Judge had awarded him. **BOLWY DOBNEY v. SIDESWAR RAO BABOO ROY KUR**

[4 B. L. R., Ap., 92: 14 W. R., 437, note]

146. ——— Bond payable by instalments.—Penalty.—Usury.—Liquidated damages.—The defendant executed a bond in favour of the plaintiff, by which he agreed to pay "interest at 8 annas per cent., month after month, and to repay the principal money within the period of three years." It was further stipulated in the bond that, "should I fail to pay the principal and interest as agreed upon, I shall pay interest at 4 per cent per mensem from the date of this bond to that of liquidation." The defendant made default in payment. *Held*, in a suit brought on the bond, that the stipulation in the bond for the payment of interest at 4 per cent. per mensem was in the nature of a penalty, and the plaintiff was only entitled to recover interest at a reasonable rate. In this case 1 per cent. per mensem was given. **BICHROOK NATH PANDAY v. RAM LOOHUN SINGH**

[11 B. L. R., 185: 19 W. R., 371]

HURREENATH DOSS v. KALEE PERSHAD ROY

[22 W. R., 474]

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

147. ————— *Penalty.*—The plaintiff lent the defendant Rs700 on an agreement that it should be repaid with interest at 8 annas a month, by instalments; if not repaid in four years the interest to be paid on the sum advanced was to be at 1 per cent. a month. In a suit after the four years had elapsed to recover the loan with interest, the Courts below held that the stipulation as to the higher percentage was a penalty, and refused to give interest at that rate. On special appeal the High Court reversed their decisions and allowed interest at 1 per cent. per mensem. **PRETAMBUR CHATTERJEE v. KALEECHURN ROY**

[11 B. L. R., 137, note: 14 W. R., 436]

148. ————— *Penalty.*—Where interest at Rs2-8 per month was stipulated for in a bond, and it was objected in a suit on the bond that the rate was exorbitant, it was held, the Court was justified in giving interest at that rate up to date of decree, that being the agreement between the parties at the time of making the contract. After decree, 12 per cent. per annum was given. **RASHESUR SURMAH v. KALEEKANATH SURMAH**

[11 B. L. R., 138, note: 11 W. R., 455]

149. ————— *Penalty.*—In a bond executed by the defendant in favour of the plaintiff it was stipulated that a loan should bear interest at Rs1-8 per mensem for three months, when the principal and interest were to be repaid, and in the event of its not being then repaid, an enhanced rate of interest at 5 per cent. per mensem should be payable from the date of the execution of the bond to payment. A decree was given in a suit on the bond in accordance with the terms thereof, and on appeal to the High Court on the ground that the stipulation for interest at 5 per cent. per mensem was a penalty, and would not be enforced, the Court dismissed the appeal with costs. **SONODIA BIBEE v. DRENDYAL LAL**

[11 B. L. R., 138, note

150. ————— *Penalty.*—A bond stipulated that the loan secured thereby should be payable in five months with interest at 2 per cent. per month, and if not then repaid, interest at 5 per cent. per month should be charged. In a suit on the bond in default being made in payment, the defendant pleaded that the higher rate of interest stipulated for in the bond could not be enforced as being contrary to Hindu law, and in the nature of a penalty. *Held* that the Court was bound to give effect to the contract entered into by the parties, and would not therefore look on the higher rate of interest as a penalty. **BROJOKISHORE ROY v. MADHUB PRESAD MISSE**

[12 B. L. R., 456, note: 17 W. R., 373]

IN THE MATTER OF NOBO COOMAR ROSE

[12 B. L. R., 457, note: 17 W. R., 431]

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

151. ————— *Penalty.*—A kabuliati contained a clause that "in default of a kist, that is, failing to pay the malguzari on the day fixed for (paying) instalments, I shall pay the zemindar's malguzari with half as much again." In a suit for arrears of rent due under the kabuliati, *Held* that the stipulation to pay half as much again, i.e., interest at 50 per cent., was in the nature of a penalty which the Court would not enforce, and interest was given at the ordinary rate. **HURBULLUBH NARAIN SINGH v. GENDA MAHARAJ**

[12 B. L. R., 473, note: 20 W. R., 257]

152. ————— *Penalty.*—*Stipulation for higher rate of interest on default in payment.*—Where a bond stipulated for a higher rate of interest in the event of the money not being paid at the appointed time, the stipulation was held to be not of the nature of a penalty but of liquidated damages, for it provided not an unvarying lump sum, but a sum increasing with the time during which the obligee was kept out of his money, and was therefore very appropriate as a measure of the proper compensation. Even when a stipulation is intended to operate as a penalty, it is incumbent on the Court to consider what amount of money would properly measure the damages consequent on the default. **BOOLAKEE LALL v. RADHA SINGH**

[22 W. R., 223]

153. ————— *Penalty.*—*Stipulation for higher rate on default in payment of mortgage-bond.*—*Power of sale under mortgage.*—Defendant entered into a bond agreeing to pay a specified rate of interest in instalments on a sum borrowed, and to repay the principal in twelve years; the obligee not being bound to accept payment earlier. A zemindari was mortgaged as security, and it was provided that if any obstacles were caused by the defendant in respect of any of the conditions of the bond, the mortgagee would be competent, after two months' notice, to sell the property, or portions thereof, and pay himself the principal and the interest thereon for the unexpired portion of the twelve years. A portion of the interest having come into arrear, plaintiff gave notice of sale; but defendant disputed his right to sell on the alleged ground as not being an "obstruction" within the bond. The parties not being able to come to a final agreement as to the conditions of sale, plaintiff brought this suit claiming the full amount of the mortgage-money with interest for twelve years. He obtained a decree, which was modified by the High Court, which gave him principal and interest at the stipulated rate. *Held* that the clause relating to sale was in the nature of a penalty, and plaintiff was not entitled to enforce it only upon default in the payment of interest. *Held* that the suit was not maintainable, either as an action for damages for the amount which plaintiff could have obtained by the sale, or on the bond itself. **VENKATAVARADA IYENGAR v. VENKATA LUCHMAMAL**

[23 W. R., P. C., 91]

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

154. ————— *Penalty.—Rate of damages.*—Where, interpreting a contract regarding the payment of interest, a Court held that the rate of interest stipulated to be paid in default of the punctual payment of the agreed interest must be regarded as a penal rate, it should have gone on to determine what reasonable damages within the stipulated rate the plaintiff was entitled to for the delay. Under the terms of a bond, dated the 18th of August 1870, the principal sum was re-payable on demand, together with interest at the rate of 16½ per cent. per annum (which was payable at the end of every four months), and in default of punctual payment of the agreed interest, it was repayable with interest at the rate of 36 per cent. per annum. Two instalments of interest at the rate agreed upon were paid and then default was made. The suit was instituted on the 1st of September 1873, interest from the date of the bond to the date of suit at the rate of 3 per cent. per mensem being claimed subject to the deduction of the interest paid. Regarding the rate of interest stipulated in default as a penal rate, the Court, seeing that the debt was secured by a mortgage of property, and that the rate of interest ordinarily payable was somewhat high, considered it sufficient to award the plaintiff 20 per cent. per annum, to commence from the expiry of eight months from the date of the bond. **BIHARI LAL v. JUNI**

[7 N. W., 108]

155. ————— *Promissory note.—Stipulation to pay interest at high rate on default in payment of note.—Penalty.—Contract Act, s. 74.*—The defendant and one D., on the 6th April 1875, gave to the plaintiff, a money-lender, a promissory note, by which they jointly and severally promised to pay the plaintiff on the 6th September R400 "for value received in cash in hand paid on signing and delivering this bond; should we neglect or fail to pay this amount on due date, then only shall it carry interest from and on due date to date of payment at the defaulting rate of 10 per cent. per mensem." At the date of the note, the defendant and D. were in the plaintiff's debt in respect of other promissory notes, and a sum of R100 was deducted from the amount of the note of the 6th April, in respect of one of these which was given up and in respect of interest on three others. A further sum of R125 was deducted as interest in advance for the five months previous to the due date of the note, and the balance (R175) was paid by cheque to D. D. died before the note became due. In a suit brought to recover R400 principal, and R400 interest, on the promissory note, on default being made in payment,—*Held*, this was not a case in which a certain sum was agreed to be paid on a breach of contract, and therefore section 74 of the Contract Act did not apply. The stipulation to pay interest at the "defaulting rate" was not in the nature of a penalty. *Held* also, that, looking at the nature of the transaction, the note contained a false statement of the

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

consideration, which amounted only to R275; and there being nothing to show that the defendant understood the real nature of the transaction, the rate of interest being exorbitant, and the consideration inadequate, the transaction was not one which ought to be enforced by a Court of Equity. **MACKINTOSH v. HUNT** . . . I. L. R., 2 Cal., 202

See **MACKINTOSH v. WINGROVE**

[I. L. R., 4 Cal., 137; 2 C. L. R., 433]

156. ————— *Compound interest.—Penalty.*—*Held* that a stipulation in a bond that the interest on the principal sum lent should be paid six-monthly, and, if not paid, should be added to the principal and bear interest at the same rate was not one of a penal nature. **TARPAL v. KESARI SINGH** . . . I. L. R., 2 All., 621

157. ————— *Compound interest.—D. gave M. a bond for the payment of certain moneys on a certain date and for the payment of interest on such moneys at R1-12 per cent. per mensem, stipulating to pay the interest six-monthly, and in default "to pay compound interest in future."* *Held* (i) that the stipulation to pay compound interest could not be regarded as a penal one, and (ii) that the bond contained an agreement to pay interest after the due date at the rate payable before that date, and that if it had been otherwise, the obligee was entitled to interest after that date at that rate, such rate not being unreasonable. **MATHURA PRASAD v. DURJAN SINGH** . . . I. L. R., 2 All., 639

158. ————— *High rate of interest.—Penalty.*—The obligors of a bond agreed to pay the principal amount by instalments without interest, and in case of default to pay interest at the rate of R3-2 per cent. per mensem, and hypothecated immovable property as security for the payment of the bond-debt, sufficient for the discharge of the debt, and furnished a surety. *Held*, by **STUART, C. J.**, in a suit on the bond, that, the principal amount being payable in the first instance without interest, the stipulation to pay interest at the rate of R3-2 per cent. per mensem, in case of default, was a penal one, and reasonable interest should only be allowed. *Held* by **SPANKIE, J.**, that, looking at all the circumstances of the case, the very high rate of interest imposed in case of default should be regarded as penal, and should be reduced. The Court under the circumstances allowed interest at the rate of one rupee per cent. per mensem. **CHUHAR MAL v. MIRA** [I. L. R., 2 All., 715]

159. ————— *Penalty.*—The defendants, on the 8th May 1869, gave the plaintiff a bond for the payment of R2,000 on the 16th February 1870. This amount consisted of two items, *vis.*, R1,650, principal, and R350, interest in advance at the rate of two per cent. per mensem for the period between the date of the bond and its due date. The bond provided that, in default of payment on the due

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

date, interest on the whole amount of Rs2,000 should be paid at the rate of two per cent. per mensem from the date of the bond. *Held*, in a suit on the bond in which interest was claimed at the rate of two per cent. per mensem from the date of the bond, that this provision was penal, and the penalty ought not to be enforced. **MAZHAR ALI KHAN v. SARDAR MAL** **I. L. R., 2 All., 769**

160. ————— *Penalty.*—The defendant having borrowed Rs50 from the plaintiff gave him on the 9th November 1878 an instrument which was in effect as follows:—*B.* (defendant) writes this rukka in favour of *A.* (plaintiff) for Rs50, cash received, to be repaid on the 13th November 1878. In the event of default he shall pay interest at Rs1 per diem. *Held* that, looking to the whole instrument, it was equitable to hold that the term "interest" was not intended to mean interest in the strict sense of that term, but a penalty, and the amount of interest should be so treated, and a reasonable amount only be allowed. The observations of **PONTIFEX, J.**, in *Bickook Nath Panday v. Ram Lockun Singh*, 11 **B. L. R.**, 135, concurred in. **BANSIDHAR v. BU ALI KHAN**

[**I. L. R.**, 3 All., 260]

161. ————— *Penalty.*—A bond for the repayment of money lent provided that such money should be repaid on a certain date; that interest at the rate of Rs7-8-0 per cent. per annum should be paid at the end of every year; and that, if default were made in the payment of interest, such money should be repaid with interest at the rate of Rs7-8-0 per cent. per annum. The bond contained an hypothecation of immoveable property as collateral security. In a suit on the bond the obligee, the obligor having failed to pay any interest, claimed interest from the date the bond became due to the date of institution of the suit at Rs7-8-0, the defaulting rate. *Held*, following the principle laid down in *Bansidhar v. Bu Ali Khan*, **I. L. R.**, 3 All., 260, that the provisions of the bond, as regards the rate of interest payable on default of the payment of interest, were in their nature penal and so excessive that, as a matter of equity, they should not be enforced. *Held* also, with reference to the question what was a reasonable amount of compensation for the obligor to pay for breach of contract, that unpaid interest should bear interest at the rate of Rs11-4-0 per cent. per annum from the date of default to the date of the High Court's decree. **KHURRAM SINGH v. BHAWANI BAKSH** **I. L. R.**, 3 All., 440

162. ————— *Penalty.*—*Equitable relief.*—By a registered bond for Rs4,500, dated the 4th October 1875, in which immoveable property was hypothecated as collateral security, it was provided that the obligor should pay interest at the rate of Rs1-4-0 per cent. per mensem at the end of every six months, and upon default in the payment

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

of such interest, that he should pay interest at the rate of Rs2 per cent. per mensem from the date of the bond. The bond also contained a stipulation against alienation, and declared that the principal sum was payable on demand. The obligees sued the obligor upon the bond, claiming to recover the principal sum, and interest from the date of the bond for three years eleven months and twenty days, less different sums amounting to Rs1,600 paid from time to time on account, at the defaulting rate of Rs2 per cent. *Held* that, having regard to the fact that the security of property was given for the loan, and the obligor contracted not to alienate the property, the defaulting rate of interest provided by the bond was of a penal character, relating as it did not only to the interest due on and subsequent to the default, but retrospectively to the date of the bond itself, and should not be awarded, but that reasonable compensation only should be awarded for the obligor's breach of contract in respect of interest. Accordingly the Court made a decree giving the obligees interest on the principal sum, from the date of the bond to the date of the decree, at Rs1-4-0 per cent. per mensem, and compound interest from the date of default in the payment of interest to the date of the decree, at the rate of four annas per cent. per mensem, by way of damages for such default. *Bansidhar v. Bu Ali Khan*, **I. L. R.**, 3 All., 260, followed: *Macintosh v. Wingrove*, **I. L. R.**, 4 Cal., 137, dissented from. **KHARAG SINGH v. BHOLA NATH**

[**I. L. R.**, 4 All., 8]

163. ————— *Penalty.*—By a deed of mortgage the defendant agreed to pay interest at the rate of one pice per rupee per mensem, and it was provided that the mortgagee was to remain in possession for a period of 25 years in lieu of principal and interest, and that the mortgagor was not to claim the property back unless he paid the principal and interest that might accrue due in 25 years from the date of the bond. *Held* that the clause in the mortgage-deed as to payment of 25 years' interest was not a penalty. **BAFUJI BALAL v. SATYABHAMBAL** **I. L. R.**, 6 Bom., 490

164. ————— *Penalty.*—The obligor of a bond agreed that, if the principal amount were not paid at the end of 12 months with the interest thereon, such interest should be added to the principal, which together should represent the principal sum, until a further year's interest at the original rate had accrued, when the same process should be followed of adding unpaid interest to the principal, and so on until the debt was liquidated. *Held* that the stipulation as to the annual capitalisation of principal and interest, for the purpose of carrying interest, could not be regarded as removing the transaction from the region of an ordinary contract on a bond under which an obligor was bound by the terms to which he had agreed. **SARJU PRASAD v. BENI MADHO** **I. L. R.**, 6 All., 6

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

185. ————— *Penalty.*—The obligor of a bond promised therein to pay the amount on a certain day, without interest, and, if he made default, to pay the amount with interest at the rate of $\text{Rs } 2$ per cent. per mensem. *Held*, in a suit on the bond, that such interest was not penal in its character, but contract interest, the liability to pay which was not made contingent on any breach of any part of the contract, and therefore should not have been reduced. **KUNJBEHARI LAL v. ILAHI BAKSHI**

[I. L. R., 6 All., 64]

186. ————— *Solenamah payable by instalments.—Penalty.*—A decree was passed on a solenamah, by the terms of which a sum of two lakhs of rupees, declared to be due to the plaintiff from the defendant, was to be paid by yearly instalments of $\text{Rs } 80,000$ each. But if at any time two instalments should be due at the same time, the whole debt should be recoverable forthwith, with interest calculated at 12 per cent., instead of 6 per cent. otherwise payable. *Held* that the condition whereby the amount of interest payable should be increased in default in due payment as above being made must be looked upon as part of the decree of the Court, and not as a penalty. **Bichook Nath Panday v. Ram Lochan Singh**, 11 B. L. R., 185, cited and distinguished. **RUN BHADOOR SINGH v. ROY NARAIN DASS**

[7 C. L. R., 82]

187. ————— *Compensation for breach of contract.—Contract Act, s. 74.—V.* lent $\text{Rs } 1,500$ to C. and the members of his family under a bond by which it was agreed that C.'s family should demise certain land on kanom to V. and receive a further sum. It was also stipulated in the bond that C. and the members of his family should pay interest at 6 per cent. upon $\text{Rs } 1,500$ until the execution of the kanom deed, and interest at 24 per cent. from the date of the loan in the event of their not making the demise. The demise was not made. *Held* that the stipulation for the enhanced rate of interest did not create an independent obligation, and that the proper course was to determine what would be a sufficient compensation for the breach of contract. **VENGIDESWARA PUTTER v. CHATTU AGHEN**

[I. L. R., 3 Mad., 224]

188. ————— *Penalty.—Act IX of 1872, s. 74.*—The obligor of a bond promised to pay the amount on demand with interest at the rate of $\text{Rs } \frac{1}{4}$ per cent. per mensem, to pay the interest every six months, and if he made default in the payment of the interest for any six months, to pay interest on such interest at such rate. *Held*, in a suit on the bond, default in the payment of interest as agreed having occurred, that, as the obligor expressly undertook to pay such high rate of interest, and there was no question of penalty, that is to say, of a liability to damages for breach of the terms of a contract in the sense of section 74 of the

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

Contract Act, the contract rate of interest stipulated to be paid could not be interfered with. **BHOLA NATH v. FATEH SINGH** . . . I. L. R., 6 All., 63

189. ————— *Act IX of 1872, s. 74.—Penalty.*—The obligor of a bond for the payment of money agreed therein in respect of interest as follows:—"I will pay the money with interest at one rupee one anna per cent. per mensem on demand: as regards interest, I agree that I will pay the interest of the amount every six months which may be found due under the accounts: in the event of non-payment every six months I will pay the interest at the rate of one rupee eight annas per mensem from the date of the execution of the bond." *Held*, by STUART, C.J., that the stipulation to pay the higher rate of interest in case of non-payment of interest at the lower rate was a stipulation in the nature of a penalty, and should be so treated in the accounts to be taken. **Bichook Nath Panday v. Ram Lochan Singh**, 11 B. L. R., 185, referred to: **Kharag Singh v. Bhola Nath**, I. L. R., 4 All., 8, observed on. *Held* by TYRRELL, J., that the non-payment of interest at the lower rate was not a breach of the contract, the contract being that the obligor might adopt either of the scales of payment, and therefore the stipulation in question was not in the nature of a penalty. **Mackintosh v. Hunt**, I. L. R., 2 Cal., 202, followed: **Kharag Singh v. Bhola Nath**, I. L. R., 4 All., 8, distinguished. **NARAIN DASS v. CHAIT RAM**. I. L. R., 6 All., 179

170. ————— *Penalty.—Promise to pay interest at unusual rate to secure prompt payment.—Contract Act, s. 74.*—A promise to pay interest if the principal sum is not repaid within fifteen days at the rate of one anna per rupee per diem from the date of the promise (intended to secure prompt payment) cannot be enforced, but interest at the current rate may be allowed. *Per* INNES, J. *Quare*,—Whether section 74 of the Contract Act is applicable to such a case? **VYTHILINGA MUDALI v. RAVANA SUNDARAPPAYAR**. I. L. R., 6 Mad., 167

171. ————— *Penal clause in contract.—Increased interest on default of payment.—Contract Act IX of 1872, s. 74.*—A mortgage-bond contained a proviso that in case of default in payment of the principal sum, with interest at the rate of one per cent. per mensem on a certain day, interest should be paid at the rate of two per cent. per mensem from the date of the bond. *Held* that the stipulation to pay increased interest must be construed as a penal clause. **MATHURA PRASAD SINGH v. LUGGUN KOER** . . . I. L. R., 9 Cal., 615

172. ————— *Promissory note.—Failure to pay on due date.—Enhanced rate of interest.—Penalty.—Breach of contract.*—Where money is borrowed under a contract for repayment with interest on a certain day, and the contract stipulates that if the money is not paid at the due date it

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

shall *thenceforth* carry interest at an enhanced rate, such a stipulation is not a penalty, and the enhanced rate agreed to be paid may be recovered in its entirety. *Mackintosh v. Hunt*, I. L. R., 2 Calc., 202, followed; *Bansidhar v. Bw Ali Khan*, I. L. R., 3 All., 260, considered. *MACKINTOSH v. CROW*. *MACKINTOSH v. GORN*. I. L. R., 9 Calc., 689; 13 C. L. R., 102

173. ————— *Penalty.—Contract Act, s. 74.*—In consideration of an advance of Rs118, the defendants executed in favour of the plaintiff a mortgage bond, dated 3rd November 1879, by which it was stipulated that the amount should be repaid "in kind by delivery of half the amount of the rubbi crops of every description produced at the first class rates, and in case the same is not paid in kind, it will be paid principal with interest from the date of execution at one anna per cent. per mensem in cash in the month of Baisakh 1287 F. S. (April 1880)." *Held* that the increased rate of interest being made payable from the date of the bond, and not only from the breach of the contract, must be taken to be in the nature of a penalty and only to be taken into consideration as a basis upon which damages for the breach of contract were to be estimated. The principle on this subject laid down in the case of *Mackintosh v. Crow*, I. L. R., 9 Calc., 689, approved of. *SUNGUT LAL v. BAIJNATH ROY* [I. L. R., 13 Calc., 164

174. ————— *Bond.—Penalty.—Contract Act, s. 74.—Act XXVIII of 1855, s. 2.*—The stipulation in a bond was in these terms:—"I cannot pay Rs1,000 now, so I will pay it within two months and 15 days; if I do not pay it within that period, I will pay the amount with interest from the date of the bond at the rate of 2 annas per rupee per month." *Held* that the stipulation was one for the payment of interest within the meaning of section 2, Act XXVIII of 1855, and did not fall under section 74 of the Contract Act. *Mackintosh v. Crow*, I. L. R., 9 Calc., 689, approved: *Balkishen Das v. Bwa Bahadur Singh*, I. L. R., 10 Calc., 305, considered. *ARJAN BIBI v. ASGAR ALI CHOWDHURI* [I. L. R., 13 Calc., 200

175. ————— *Instalment bond.—Agreement to pay enhanced rate of interest on default.*—An agreement to pay the principal of a debt by instalments with interest, and on default of payment of each instalment to pay an enhanced rate of interest thereon from the date of default of payment, is not an agreement which should be relieved against. Dictum of *WILSON, J.*, in *Mackintosh v. Crow* (I. L. R., 9 Calc., 689) approved. *JAGANADHAM v. RAGUNADHA*. I. L. R., 9 Mad., 276

176. ————— *Penalty.—Bond*—The lender of money, for the use of which interest is to be paid, may, at the time of making the loan, protect himself against breach of the borrower's con-

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

tract to pay the interest when due, either by a stipulation that in case of such breach, he shall be entitled to recover compound interest or by a stipulation that, in such a case, the rate of interest shall be increased. But a condition that, upon failure by the borrower to pay the interest when due, both compound interest and an increased rate shall be payable, amounts to a penalty, inasmuch as the two stipulations together cannot be regarded as a fair agreement with reference to the loss sustained by the lender. In a bond dated in February 1877, for a sum of money payable, in June 1882, it was provided that interest should be paid at the rate of Rs9 per cent. per annum on the *Puranmashi* of every *Jaith*, and that, if the interest were not duly paid, the rate should be increased to Rs15 per cent. per annum, and compound interest should be payable. There was no provision for payment of interest from the time when the principal became due. In December 1884, the obligee brought a suit on the bond against the obligor, claiming interest from the date of the bond to the date of the institution of the suit at Rs15 per annum, and compound interest for the same period at the same rate. *Held*, that the stipulations contained in the bond must be regarded as penal, and it was therefore the Court's duty to limit the penalty to what was the real amount of damage sustained by the plaintiff in consequence of the defendant's breach of the contract to pay the interest at the due date. *Held* that, for this purpose, the proper course was to reduce the interest to Rs9 per cent. per annum, reckoned at compound interest, with yearly rests, to the due date of the bond; and that, inasmuch as the plaintiff was to blame for not having enforced his remedy at an earlier date, he should only recover simple interest at Rs9 per cent. from the due date of payment, upon the entire sum which was due when the bond became due, i.e., the principal added to the compound interest calculated at Rs9 per cent. The same obligee held another bond executed by the same obligors in June 1879, for a sum of money payable in June, 1882, with interest at Rs9 per cent. per annum. There was a provision in the bond that if the principal and interest were not paid on the due date, the obligee should be entitled to recover the principal with interest at the rate of Rs24 per cent. per annum from the date of the bond. In December 1884, the obligee brought a suit on the bond against the obligor claiming interest on the principal amount from its date to the date of the institution of the suit at the rate of Rs24 per cent. per annum. *Held*, that the increased rate of interest might fairly be considered as representing the damages sustained by the lender by reason of the borrower's failure to pay interest at the specified time, and should therefore be paid down to the due date of the bond; and that, as the plaintiff failed to enforce payment for a long time, the interest, from the due date, might fairly revert to the old rate of Rs9 per cent. per annum, and the amount should be calculated from that date, on that basis, on

INTEREST—continued.**4. STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—continued.****Stipulation for increased interest—continued.**

the whole amount of principal and interest then due on the bond. *DIP NARAIN RAI v. DIPAN RAI*

[I. L. R., 8 All., 185]

177. ————— Penalty.—

Higher rate of interest upon default in payment of instalment.—A decree, of which the terms had been arranged by a solehnama between the parties, for payment of money by instalments with interest at six per cent., was construed to provide also for three contingencies, *vis.*, non-payment at due date, (a) of the first instalment, two consecutive instalments being in arrear at the same time; (b) of instalments, other than the first; (c) of the first instalment, simply. Upon the occurrence of (a), or of (b), execution might issue for the whole decretal money with interest thereon at twelve per cent. Upon the occurrence of (c) execution might issue for that instalment, with interest at twelve per cent. from the date of the decree. *Held* that these provisions for double interest were but a reasonable substitution of a higher rate of interest for a lower, in a given state of circumstances, and were not in the nature of a penalty against which equitable relief might be claimed. *BALKISHN DAS v. RUN BAHADUR SINGH*

[I. L. R., 10 Cal., 305; 13 C. L. R., 302
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178. ————— Penalty.—

Liquidated damages.—Where a document contains covenants for the performance of several things, and then one large sum is stated to be payable in the event of a breach, such sum must be considered a penalty; but when it is agreed that if a party do or refrain from doing any particular thing a certain sum shall be paid by him then the sum stated may be treated as liquidated damages. A bond for Rs20,000 which provided for payment of interest at the rate of Rs1-4 per cent. per month contained the following clause: "We hereby promise and give in writing that we shall pay year by year a sum of Rs3,000 on account of the interest. . . . And in case of our failing to pay year by year the said sum of Rs3,000 the same shall be considered as principal, and thereon interest shall run also at the rate of Rs1-4 per cent. per month." *Held* that the clause was not penal, but in the nature of an agreement to pay liquidated damages, and that the plaintiff was entitled to a decree for the amount due on the bond with interest as agreed upon. *BHARY LALL DAS v. THE NARAIN*

[I. L. R., 10 Cal., 784]

179. ————— Award of interest at a penal rate.—*Compensation for special damage.*—Interest at a penal rate should not be awarded if there is no demand for it, or for a sum by way of compensation for special damage on the part of the plaintiff. *TIKAMDAS JAVAHIRIDAS v. GANGA RAM MATHURADAS*

[11 Bom., 303]

180. ————— Notice of intention to enforce penal rate of interest.—A decree-holder

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intending to enforce the penalty for delay in the payment of instalments is bound to tell the judgment-debtor so when the instalments are brought to him. *SHAMA CHURN SINGH v. PROTAP COOMAR GHOSAL*
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2. ————— Defendant not claiming whole subject-matter.—*Suit irregularly framed.*—An interpleader-suit is not improperly constituted merely because one of the defendants does not claim the whole of the subject-matter. *Hoggart v. Cutts, Cr. and P., 197*, observed upon. *SECRETARY OF STATE v. MAHOMED HOSSAIN* 1 Mad., 360

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1. ———— *Mode of framing issues.*—*Civil Procedure Code, 1859, s. 139.*—*Semle.*—Under section 139 of Act VIII of 1859, the issues were to be framed upon the plaint, written statements, and allegations of the parties or their counsel. *MACKINTOSH v. TEMPLE* . . . 2 Ind. Jur., N. S., 333

2. ———— *Plaint.*—*Written and oral statements.*—The issues are to be framed from all questions of law or fact upon which the parties may be at issue, and are to be collected, not merely from the plaint, nor from the written statements, but may also be taken from the oral statements of their pleaders. *KOWSULLYA DOSSEE v. RAM JUGGURNATH DEY SIRCAR* . . . 8 W. R., 163

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3. ———— *Civil Procedure Code, 1859, s. 139.*—*Plaint.—Written and oral statements.*—Under section 139, Act VIII of 1859, the Court may frame the issues from the oral examination of the parties or their pleaders notwithstanding any difference between the allegations of fact contained in those examinations and the allegations contained in the written statements. *SHAHREZADI BEGUM v. HIMMAT BAHADUR*
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4. ———— *Civil Procedure Code, 1859, s. 139.*—A Court cannot refuse to enquire into a plea set up by a plaintiff's pleaders in reply to questions put them by the Court, although such plea was not advanced in the original plaint. Section 139, Code of Civil Procedure, authorised a Court to frame issues on allegations collected from the oral examination of parties or their pleaders, notwithstanding discrepancy between these allegations and the written pleadings. *KOBERBOODEN AHMED v. NYAN BIBEE* . . . 8 W. R., 354

5. ———— *Civil Procedure Code, 1859, s. 147.*—A Court, in framing issues, is not bound down to the language of the plaint and written statement; but may frame them not only from the pleadings, but also from the statements of the parties and their pleaders made before the Court. *MAHOMED MAHMOOD v. SAFAR ALI*
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6. ———— *Settlement of issues.*—*Civil Procedure Code, 1859, s. 139.*—Issues are to be fixed under section 139, Code of Civil Procedure, when both parties appear, and the Court can ascertain from them what are the points upon which they are at issue. The Court is not bound to fix any issue when the defendant does not appear, but ought to proceed under section 111 to hear the case *ex parte*. *AMBER ALI SOWDAGUR v. IMAMOODDEEN* . . . 15 W. R., 145

7. ———— *Form of issues requisite for trial.*—The issues should raise matters fairly in controversy between the parties, even though the pleadings may be defectively drawn. *CANNAMMAL AYAIR v. VIJAYA RAGUNADA RANGA SAMY SINGAPULLIAH* . . . 8 Mad., 114

ISSUES—continued.

1. FRAMING AND SETTling ISSUES

—continued.

Settlement of issues—continued.

8. ———— *Nature of issues requisite for trial.*—It may be laid down as a general rule that only such averments should be made the subject of issues as are essential to support the cause of action and are denied by the defendant, or as are essential to support a plea and are denied by the plaintiff. Mere pieces of evidence which are to be adduced to enable the Court to infer the truth of a material averment, ought not to be made the subject of a separate issue; nor should the motives of the plaintiff in bringing the suit be put in issue; for if he have a good cause of action his motives, as ill-will, pique, &c., would not be an answer to it. *BIRCH v. FURZIND ALI* . . . 3 N. W., 303

9. ———— *Duty of Court.*—The duty of a Judge in clearly ascertaining the real points in dispute, and framing issues accordingly, pointed out. *APATA v. RAMA*
[I. L. R., 3 Bom., 210]

10. ———— *Suit against minor.—Issue not founded on plaintiff's affirmative statements.*—In a suit by a person claiming as the ultimate heir in reversion to the estate of a deceased widow, it was held that the plaintiff was bound, before he could be allowed to succeed against the minor in possession, to pledge himself to a specific case and to prove that case, and the Lower Court was held to have done wrong in raising an issue which was not based and moulded upon some specific affirmative allegation made as part of the plaintiff's case, thus putting the minor to the peril of such an issue merely on a general negative statement made by his guardian. *JUGDEEP NARAIN SAHNI v. COURT OF WARDS*
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11. ———— *Raising issue on clear point of law.*—There is nothing in the Code of Civil Procedure which imposes upon the Judge the duty of allowing an issue to be raised on a point of law which he considers to be perfectly clear. *IMPERIAL BANKING AND TRADING CO. v. PRANJIVANDAS HARIJIVANDAS* . . . 2 Bom., 272: 2nd Ed., 258

2. FRESH OR ADDITIONAL ISSUES.

12. ———— *Raising issues not raised in pleadings.—Proceedings against policy or morality.*—Although a Court may have the right, and is perhaps even under an obligation, to take cognisance *motu proprio* of any objection manifestly apparent on the face of a proceeding showing that it is against morality or public policy, yet where this is only to be collected from the evidence by inference and is capable of explanation or answer by counter-evidence, it is highly inconvenient, and may lead to the most direct injustice, to enter into the enquiry if the issue has not been presented by the pleadings or the points recorded for proof. *FISCHER v. KAMALA NAIKER*

[3 W. R., P. C., 33: 8 Moore's I. A., 170]

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2. FRESH OR ADDITIONAL ISSUES—continued.

Raising issues not raised in pleadings—continued.

13. ————— *Question raised at hearing of suit.*—Held that the Court was not on its own motion competent to determine a question which was not alleged, nor raised by the pleadings of the parties. But if the question was raised even on the day of the hearing of the case at any time before the decision of the case, the Court ought not to have rejected it because it was not raised by the written statement, but ought to have framed issues to determine the question. *DYASHUNKER v. MAHOMED AMEEN-OD-DEEN KHAN* . . . 3 *Agra*, 246

14. ————— *Suit for pre-emption.*—When the plaintiff claimed pre-emption on one ground, and the Court raised an issue as to his right on another ground, to which the parties assented, and the case was decided against him as he had not proved his right on that ground,—Held, the Court would not interfere with the finding on special appeal. *SHAW SUXOY LALL v. WAJED ALI KHAN* [13 *W. R.*, 205

SHEOJUTTUN ROY v. ANWAR ALI [13 *W. R.*, 189

15. ————— *Suit on mortgage.*—*Validity of mortgage.*—Where a plaintiff fails to show that a mortgage, created by certain persons as executrix and executors of a Hindu will, has been validly created by them in that capacity, the Court will, unless it is manifestly inequitable to do so, allow him to raise an issue that the mortgage was validly created by the parties in another character. *NILKANT CHATTERJEE v. PHARI MOHAN DAS* [3 *B. L. R.*, O. C., 7; 11 *W. R.*, O. C., 21

16. ————— *Suit for declaration of title.*—On the evidence, the defendant wished to raise issues as to the unchastity and inability of the plaintiff to succeed, and as to her suing on behalf of another person, not having alleged that she was doing so, neither of which matters were referred to in his written statement; but leave to raise them was refused, and the Court held that the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favour. *SWARNAMAYI RAU v. SRINIBASH KOYAL* . . . 6 *B. L. R.*, 144

17. ————— *Suit as heir of adopted son.*—Where the son of the son first adopted sued as heir of the second adopted son to obtain the property left by him, and the suit throughout was contested with respect to his claim as heir of that second adopted son,—Held, the plaintiff could not, on appeal, shift his ground and regard the second adopted son as a trespasser, and seek to recover the property on the ground of its having belonged to the ancestor. *GOPIJI LOLL v. CHUNDRAOLES BHOOLJEE* . . . 11 *B. L. R.*, P. C., 391; 19 *W. R.*, 13 [1 *L. R.*, I. A., Sup. Vol., 131

ISSUES—continued.

2. FRESH OR ADDITIONAL ISSUES—continued.

Raising issues not raised in pleadings—continued.

18. ————— A defendant is not precluded from setting up a defence which does not appear in her written statement where the plaintiff does not set forth the true facts, and the Court will allow an issue to be raised on it. *SOONDER NARAIN PANDAH v. NAMDAE* . . . 21 *W. R.*, 407

DOORGA NARAIN BOSE v. BROJO KISHORE GHOSH . . . 23 *W. R.*, 172

19. ————— *Amendment of plaint.*—*Civil Procedure Code, 1859, ss. 189-141.*—In 1817, the ancestor of the plaintiffs had obtained from the zemindar a mautrai istemrari lease of a certain portion of his property. In 1837, the entire zemindari was put up to sale for arrears of Government revenue, and was purchased by Government as the highest bidder, who thereupon granted a lease for a term of twenty years to *W.* This revenue sale was never set aside; but in 1843 the Government restored the estate to the Rajah zemindar with all the prior incumbrances, but subject to his confirming the lease to *W.* In 1844, the father of the plaintiffs brought a suit to recover possession of their tenure, but the suit was dismissed by the Principal Sudder Ameen, on the ground that the right to sue had not accrued, and could only arise on the expiration of the lease to *W.* This judgment was reversed by the Sudder Dewany Adawlut, but was restored and affirmed on appeal by the Judicial Committee. In the meantime, and before the expiry of the lease to *W.*, owing to certain fraudulent transactions on the part of *A.*, who had got into possession of the estate as the purchaser of the interests of certain mortgagees of the Rajah, the property was again put up to sale for arrears of Government revenue, and was purchased by *M.*, a party to the transactions abovementioned. The Rajah, however, succeeded in getting this sale reversed in 1866, and obtained possession of his estate in 1871. In a suit, instituted on the 23rd October 1873, against the Rajah and certain other parties, to whom he had granted a patni lease, the plaintiffs alleged that the sale of 1837 was set aside by Government as illegal, and that consequently their tenure had revived; that the effect of the Principal Sudder Ameen's decision, confirmed by the Privy Council, was to postpone their right to obtain possession of their tenure, until after the expiration of the lease to *W.*; that when that lease expired, the property was in the possession of *M.*, of the fraudulent character of whose title they had no knowledge; and that their right to sue in the present case consequently arose only in 1871. The defence was that the plaintiff disclosed no cause of action; that the cause of action, if any, was barred by the law of limitation; and that the tenure was destroyed by the proceedings connected with the sale in 1837, which was never set aside. The Judge held that the plaintiff disclosed a cause of action which arose in 1837, and that the suit was consequently barred. He accordingly dismissed the suit without taking any evidence. On appeal to the

ISSUES—continued.**2. FRESH OR ADDITIONAL ISSUES—continued.****Raising issues not raised in pleadings—continued.**

High Court, it was admitted on the part of the plaintiffs that the sale of 1837 was never set aside; but it was contended that the restoration of the zemindari to the zemindar, "with all the former incumbrances," gave rise to an equity of a personal character against the Rajah, and those taking under him with notice of the plaintiffs' title, to restore the plaintiffs' tenure, which equity fastened upon him on his obtaining actual possession of the estate; and that, therefore, the cause of action accrued only in 1871. On the part of the defendants it was objected that the plaintiffs had no right to make a new case in appeal, and inasmuch as the equity, which was now sought to be fastened on the zemindar, was never raised in the pleadings, it could not now be set up. *Held* that, under sections 139 and 141 of the Civil Procedure Code, the plaintiffs might be allowed to amend their case in any stage before a final decision: and inasmuch as, if the plaintiffs' case as so amended were proved, the suit would not be barred, it was necessary for the determination of the question of limitation that the case should be remanded to the lower Court for trial. **RAMDOYAL KHAN v. AJODHYA RAM KHAN**. I. L. R., 2 Calo., 1: 25 W. R., 425

20. — Civil Procedure Code, 1877, s. 149 (1859, s. 141).—Where no injustice would be done to either party, the Courts, in the exercise of their discretion, under special circumstances, may allow issues to be raised upon matter which does not strictly come within the proper scope of the pleadings. The power to allow such amendments is given by the first part of section 149 of Act X of 1877 corresponding with the first part of section 141 of Act VIII of 1859. **NEHORA ROY v. RADHA PRESHAD SINGH**

[I. L. R., 5 Calo., 64: 4 C. L. R., 353]

21. — Additional issue.—Matter not in plaint but consistent with it.—It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it) or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons. **MOHDE v. DONGRE**

[I. L. R., 5 Bom., 609]

22. — Civil Procedure Code, 1859, s. 141.—Where a Court shortly before decision recorded a proceeding declaring its intention to frame additional issues, and reserved the actual framing of the issues for the time of giving judgment, its procedure was held not to be warranted by section 141 of the Code of Civil Procedure. **KAMUL KAMINER DASSEE v. OBHOY CHURN GHOSH**

[15 W. R., 151]

23. — Fresh issue.—Raising fresh issue on alternative plea.—Where, from the way in

ISSUES—continued.**2. FRESH OR ADDITIONAL ISSUES—continued.****Fresh issue—continued.**

which the issues were framed and the pleadings worded, it was clear that there was no contention on the part of the defendant as to whether the terms of the deed on which the suit was based had been strictly complied with or not, but the *factum* of the deed itself was only put in issue by the defendant.—*Held* that this was not a case in which the defendant was entitled to fall back upon an alternative plea and raise the question of compliance. **SHUHOCHURN DASSEE v. SHOWDAMINER DASSEE**. 7 W. R., 306

24. — Raising new issues.—The Court will not raise an issue so as to raise a wholly different question from that on which the parties have come into Court. **BIZJIE BIRSE v. MONOHUR DOSS**. 2 Ind. Jur., N. S., 118

NEHORA ROY v. RADHA PRESHAD SINGH

[I. L. R., 5 Calo., 64]

See OKHOY COOMAR CHATTERJEE v. DHIRAJ MAHTAB CHAND. 23 W. R., 299

25. — Special appeal.—Raising new issues.—A party cannot be permitted to change in special appeal the allegations on which he went to trial in the Courts below, and to raise altogether a new issue. **SHIUDAS NARAYAN SINGH v. BHAGWAN DUTT**

[2 B. L. R., Ap., 15: 11 W. R., 10]

KHOODER RAM DUTT v. KISHEN CHAND GOLISCHA. 25 W. R., 145

26. — Mode of dealing with issues.—If by inadvertence or other cause the recorded issues do not enable the Court to try the whole case on the merits, an opportunity should be afforded by amendment, and, if need be, by adjournment for the decision of the real points in issue. **HUNOOMAN PRESHAD PANDY v. MUNDRAJ KOONWEREE**

[6 Moore's I. A., 393: 18 W. R., 81, note]

RAM PRESHAD DUTT v. KRISHTO MOHUN SHAW [18 W. R., 297]

27. — Civil Procedure Code, 1859, s. 141.—Raising fresh issue after hearing the evidence.—In a case in which, after the evidence of both parties had been taken the principal defendant asked for permission to file an amended written answer which would in effect raise a new question as part of the defence.—*Held* that, although the mode of making the application was perhaps somewhat informal, it was the duty of the Munsif, if it appeared that this was the real question between the parties, to amend the issues in order to its determination. Where a Munsif rejected such application and decreed the case, and it appeared to the Judge on appeal, that the evidence on the record was sufficient to determine the question.—*Held* that the lower Appellate Court was right in giving effect to the defence. **BOLEY MEAH v. KHETOO GORAI**

[20 W. R., 208]

ISSUES—continued.

2. FRESH OR ADDITIONAL ISSUES—continued.

Fresh issue—continued.

28. ———— *Civil Procedure Code, 1859, ss. 139, 141.—Adding or amending issues.*—All that can be done under section 139, Act VIII of 1859, must be done at the settlement of issues; section 141 gave the Court discretion to amend or add issues only if some new matter should turn up in the course of the case. AGA SYUD SADUOK v. JACKARIAN MAHOMED

[2 Ind. Jur., N. S., 306]

29. ———— *Amendment of issues.—Civil Procedure Code, Act VIII of 1859, s. 141.—Civil Procedure Code, Act X of 1877, s. 149.*—A Judge is not bound to make any amendment in the issues of a case, except for the purpose of more effectually putting in issue and trying the real question or questions in controversy as disclosed by the pleadings on either side. NEHORA ROY v. RADHA PERSHAD SINGH

[1 I. L. R., 5 Cal., 64; 4 C. L. R., 453]

BLEVIN BHEEN v. MONOHAR DOSS

[2 Ind. Jur., N. S., 118]

30. ———— *Amendment of issues at hearing.—Practice.*—Although under certain circumstances a Judge at a trial may allow amendments or raise issues other than those settled, yet, when a Judge at the settlement of issues has refused to raise a certain issue, that question ought not to be re-opened at the trial, and the Judge at the trial ought not to modify the issues so as to re-open any question which the Judge settling the issues has decided. BOLYN CHUND SINGH v. MOULARD

[1 I. L. R., 4 Cal., 572]

31. ———— *Varying or raising fresh issues on appeal.*—A Court of Appeal cannot raise on appeal an issue which was not raised in the Court of first instance, the functions of a Court of Appeal being not to interfere upon mere points of form, but to rectify a judgment where there has been error on the merits, whether that error has arisen from a misapprehension of the facts or misapplication of the law. BROJO SOONDUR MITTER v. FUTICK CHUNDER ROY

[17 W. R., 407]

RAM NARAIN ROY v. NIL MONEE ADHIKAREE

[23 W. R., 169]

MACKINTOSH v. LALL CHAND MALEE

[23 W. R., 332]

32. ———— *Expression of opinion by Court on issue not formally raised.—Refusal to permit additional issue on appeal.*—Parties are not bound by an opinion of the lower Court on a matter not in issue in the same manner as if the Judge had decided an issue formally and properly raised before him; and when a case comes before the High Court on appeal, it should be determined upon the issues and grounds raised in the Court below except where under Act VIII of 1859, section 354, the Court would consider it right to frame an additional issue. NAWAB NAZIM OF BENGAL v. AMRAO BEGUM

[21 W. R., 59]

ISSUES—continued.

2. FRESH OR ADDITIONAL ISSUES—continued.

Varying or raising fresh issues on appeal—continued.

33. ———— *Production of evidence on appeal.*—Where a quite new and different issue is raised in the Appellate Court, it ought to be done in such a way as to give the parties the fullest opportunity of producing evidence upon it, because if it is at all likely that, in consequence of the issues framed in the first Court, the parties were induced to abstain from giving evidence, it would not be right to decide the issues against them on account of the absence of evidence. LATOO MUNDLE v. BHOOSUN MOHUN CHATTERJEE

17 W. R., 361

See ESHAN CHUNDER SRIN v. DHONAYE

[11 W. R., 61]

34. ———— *Objection not raised to issues.*—Where no objection was taken in the grounds of (regular) appeal to the issues as framed in the Court of first instance, nor was there any such contention in those grounds as that the High Court ought to direct the Subordinate Court to raise the proper issues, the Court refused to remand the case with a view to other issues being raised and tried, as it thought it would not be justified to travel out of the record and make a case for the defendants which they did not make in their pleadings in the Court below and which was not in issue in that Court. JOWADUNNISSA SATUDAI KHANDAN v. JHAMAN LALL MISSEER

23 W. R., 158

3. ISSUES IN RENT SUITS.

35. ———— *Procedure.—Act X of 1859, s. 65.*—A. sued B. for enhancement of rent at a rate specified, but at the trial failing to prove that proper notice had been served upon B. he claimed only rent at the rate formerly paid. No issue was recorded as to what the former rate had been, until the last day of hearing, after both parties and several of the witnesses had been examined in respect of the issues originally recorded; and the Collector without adjourning the case for trial upon such issue, having examined two witnesses who remained for examination, gave judgment in the case. Held that, under section 65 of Act X of 1859, the case ought to have been adjourned, and a convenient day fixed for trial upon the new issue. Case remanded accordingly. SRIHARI MANDAL v. JADUNATH GHOSH

[1 B. L. R., A. C., 110; 10 W. R., 169]

36. ———— *Recording issues.—Collector.—Act X of 1859, s. 65.*—Where both parties are at issue on any question upon which it is necessary to hear further evidence, the Collector was bound, under section 65, Act X of 1859, to declare and record such issues. SHOOKOOMAR SINGH v. CRUISE

[6 W. R., Act X, 105]

37. ———— *Suit for arrears of rent.—Intervenor under Civil Procedure Code, s. 73.*—D. C. S., the zemindar, brought a suit against B., a ryot, for recovery of arrears of rent valued below

ISSUES—continued.**3. ISSUES IN RENT SUITS—continued.****Suit for arrears of rent—continued.**

R100. *B.* set up in defence that the rent was not payable to *D. C. S.* but to *N. C. A.*, the mokuridar. *N. C. A.*, who claimed under a mokurari title, and alleged that he was in receipt of the rents from the ryots, was made a party under section 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff, which, on appeal by *N. C. A.*, was reversed and the suit dismissed. *Held*, on appeal to the High Court, the only issue to be tried was whether the relation of landlord and tenant subsisted between *D. C. S.* and *B.* **DAYAL CHAND SAHOY v. NABIN CHANDRA ADHIKARI**

[8 B. L. R., 180: 16 W. R., 235]

4. EVIDENCE ON SETTLEMENT OF ISSUES.

38. ——— **Summons to witness.**—Act VIII of 1859 conferred no authority on a Judge to issue summonses to witnesses to attend on the settlement of issues. The written statements must be prepared with great care and deliberation so as to dispense altogether with parol evidence at the settlement of issues. **ANUND CHUNDER BANERJEE v. WOONES CHUNDER ROY**

[1 Ind. Jur., O. S., 15: 1 Hyde, 147]

Evidence, however, might, if necessary, be taken at the settlement of issues, *see* section 140 of Act VIII of 1859 and section 143 of the Civil Procedure Code, 1882.

39. ——— **Non-attendance of witnesses.**—*Necessary issues.*—*Adjournment for hearing evidence.*—If the parties do not secure the attendance of their witnesses at the first hearing, and there are, on the examination of parties, issues upon which evidence is necessary, the Court is bound to fix a day for the hearing of such evidence. **ENAYET HOSSAIN v. BIBEE KHOONUNISSA**

9 W. R., 246

5. ISSUES IN SPECIAL SUITS.

40. ——— **Suit to be declared proprietors of land and to assess rate of rent.**—*Issue in general terms.*—The issues should not be in too general terms, and should, if possible, embrace the whole matter in dispute. The plaintiffs, the cultivators of certain lands yielding rent to a pagoda, of which the first defendant was the recently appointed dharmakarta, claimed to be declared proprietors of the said lands, to be exempted from the payment of rent, at the rate of two-thirds of the gross produce, to be declared liable to pay a certain lower rent set forth in the plaint, and to obtain a refund of the amount paid under an order of the Sub-Collector in 1853 passed without jurisdiction in excess of the rent justly payable. The issue given by the Principal Sudder Ameen was "whether the first defendant is entitled to rent at the rate specified in document A."—*Held* that this issue was too general and only embraced a part of the matter in dispute, and the issue "what is a fair and reasonable rate of rent" directed to be sent down to the lower Court. **KUTTY SUBRAMANIAM v. CHINNA MUTTER PILLAI**

3 Mad., 25

ISSUES—continued.**5. ISSUES IN SPECIAL SUITS—continued.**

41. ——— **Suit by tenant for possession after alleged illegal ejectment.**—*Question of right of occupancy.*—The question of a prescriptive right of occupancy cannot arise as an issue in a case where a tenant sues to recover possession of land from which he alleges he has been illegally ejected. The tenant might have been in lawful possession only six weeks, and yet his eviction might have been illegal, and he would be entitled to recover. **BAHADUR ALLY v. DOMUN SINGH**

7 W. R., 27

42. ——— **Issue raised between co-defendants.**—*Validity of will.*—One of the defendants to a suit having relied on the validity of a hibbanamah and a will, the former of which was alone contested below by the plaintiff, the lower Court was right in not trying the issue as to the will, which was one raised between co-defendants. **BRUGWAN CHUNDER BANERJEE v. DEHINA DEBIA**

8 W. R., 356

43. ——— **Issues raised in suit for kabuliat with intervenor.**—In a suit for a kabuliat of twenty-five parcels of land, where the defendant alleged that he only held three, and that he was not the tenant of the plaintiff, but of a third party who intervened claiming the land as included in his half share of a part of a talook as being the person in receipt of the rents, the lower Appellate Court declared that as neither party had given any conclusive evidence of actual possession, and as the ryot's holding had been found to appertain to the half share of which the intervenor had proved possession, the plaintiff was entitled to a kabuliat for a moiety of the plots held by the defendant.—*Held* that the ryot was entitled to be heard whether he paid the rents to the plaintiff, and whether he was bound to give the kabuliat asked for, and plaintiff was entitled to be heard whether the ryot held three parcels or twenty-five. **RADHAKISHORE TALOOKDAR v. GOLUCK CHUNDER ROY**

11 W. R., 366

44. ——— **Suit to have right declared to usufruct of property.**—*Discretion of Court.*—The mortgage of certain property having been purchased by *S.*, he sold it to *G.*, who foreclosed, got a decree for possession, and sold to *W.* *W.*'s intervention having failed in a suit for arrears of rent by a party setting up a title intermediate between him and the ryot, on the ground of a miras pottah obtained from the mortgagor subsequently to the mortgage, he (*W.*) sued to have his right declared to the rents payable by that ryot. The suit was dismissed on certain issues in the Court of first instance, but decreed in appeal on the single issue as to the pottah having been granted subsequent to the conditional sale. *Held* that this issue arose legitimately, and was one within the lower Appellate Court's discretion to allow and within its jurisdiction to determine. **GOBIND CHUNDER BANERJEE v. WISE**

[12 W. R., 19]

45. ——— **Suit for land forming endowed property.**—*Validity of grant.*—*Limitation.*—A suit for a portion of land granted in trust for purposes connected with the preservation of a

ISSUES—continued.**5. ISSUES IN SPECIAL SUITS—continued.****Suit for land forming endowed property—continued.**

Mahomedan saint's tomb, where plaintiff claimed as son of the last mutwallee, on the allegation that he (plaintiff) had been dispossessed during his minority, defendant's case being that the grant had never been in the possession of mutwallees, but had been divided among the original grantee's heirs, from one of whom the portion in dispute had come into the possession of his (defendant's) vendor. *Held* that the material point to try was whether plaintiff's ancestors had from the time of the grant been in possession, or whether the land had been inherited according to the ordinary rules of Mahomedan inheritance by the heirs of the grantees. *Held* that, on the question of limitation, it was for the Judge to find whether plaintiff's father had been in possession within time. **REASUT ALI v. ABBOTT** **12 W. R., 132**

46. ——— Suit for damages for ejectment.—In a suit by a lessee to recover a sum on account of dispossession on the allegation that his lessors had fraudulently given a second lease to another party, and that with the exception of a specified sum collected by himself the remaining collections for the year had been made by the lessors, and that he was entitled to recover those collections. *Held* that, with reference to the footing on which the plaintiff sued that it was not for the Judge to assess damages but to find on the allegation that the lessors had collected the year's rents with the exception of a given sum. **GOBIND CHUND JUTIA v. MUN MOHAN JHA** **[12 W. R., 193]**

47. ——— Suit for ejectment.—Issue as to wrongful possession of defendants.—Where certain zemindars sued to recover khas possession of certain shares of land, alleging that defendants were wrongfully in possession, it was held that, though bound to prove their right to khas possession, yet whether they proved themselves to have been recently in khas possession or not, they had a right to a decision as to the alleged wrongful possession of the defendants. **JYKISHTO MOOKERJEE v. HURNEHUR MOOKERJEE** **[12 W. R., 365]**

48. ——— Suit for possession.—Sale of mortgaged under-tenures for arrears of rent.—After foreclosure a mortgagee was executing his decree for possession when an objection was preferred on the part of the landlord as purchaser of the tenure which had been sold in satisfaction of his own decree for rent, a suit was accordingly framed under section 229, Civil Procedure Code, 1859, in which the mortgagee was made plaintiff, and the claimant defendant. *Held* that the whole question was, which of the two parties claiming was entitled to possession; and the issue to be decided was whether or no the tenure was sold subject to previous incumbrances. **CHUNDEE MONER DABEE v. MOHESH CHUNDER BANERJEE** **[12 W. R., 460]**

49. ——— Suit for possession where defendant turns out to be a mortgagee.—Procedure.—In a suit for possession of a piece of

ISSUES—continued.**5. ISSUES IN SPECIAL SUITS—continued.****Suit for possession where defendant turns out to be a mortgagee—continued.**

land where defendant pleads limitation, and his witness unexpectedly discloses that his possession is that of a mortgagee. *Held* that it was impossible for the Court to overlook that testimony, and that it was its duty to frame an issue, find expressly on the fact of the mortgage, and provide for the rights of the mortgagee; for if the mortgage was found to subsist in defendant, the plaintiff could not in this case recover a decree for possession, but should be referred to a suit properly framed for redemption. **MURBOOT SINGH v. CHUNDER MASHEE KOOR** **[16 W. R., 44]**

50. ——— Suit by putnidars for rent.—Plea of lakhiraj title.—In a suit by putnidars for rent where the defendants plead a lakhiraj title set up long before the plaintiffs acquired their putni, the issue to be tried is, not whether the lakhiraj title is valid or not, but whether plaintiffs have at any time received rent for the lands in dispute. **PURBOODDEEN MULLICK v. MOLAM BIBEE** **[14 W. R., 149]**

51. ——— Suit for damages and injunction for cutting bund.—Issues of title and cause of action.—In a suit to have the portion of a bund cut by the defendant closed up, and for an injunction restraining the defendant from so cutting the bund in future as to injure the plaintiff. *Held* that it was material to try the question whether the plaintiff had a cause of action, and also the question as to the property in the bund, because if the bund belonged exclusively to the plaintiff, the defendant, unless he could prove a right of user, was a trespasser, and on the other hand, if it belonged exclusively to the defendant it would be necessary to enquire whether the defendant had so used his own property as to injure the property of his neighbour. **NUND KISHORE SINGH v. RAM KISHORE SINGH DEB** **[17 W. R., 359]**

52. ——— Suit by mortgagee for possession without foreclosure.—Raising issue by Court.—Civil Procedure Code, 1859, s. 141.—In a suit to recover possession of certain premises on the allegation that defendant had sold them to plaintiff's husband nearly twelve years previously, defendant denied the execution of the deed on which plaintiff relied. The first Court was satisfied as to the fact of execution; but perceiving that possession had not followed, had some doubt as to the nature of the transaction and examined a witness thereon. The result was that the transaction was found to be not an absolute sale, but a mortgage. As this fact, however, had been neither pleaded nor relied upon, the Munsif gave plaintiff a decree. The lower Appellate Court finding that the preliminary foreclosure proceedings had not been taken by the plaintiff, reversed the decision. *Held* that it was incumbent on the Court of first instance, under Act VIII of 1859, section 141, to frame an issue as to the nature of the transaction, and that the suit was properly dismissed by the lower

ISSUES—continued.**5. ISSUES IN SPECIAL SUITS—continued.****Suit by mortgagee for possession without foreclosure—continued.**

Appellate Court because plaintiff had not foreclosed the mortgage. **NUNDO LALL MITTAR v. PROSUNNO MOYEE DEBIA** **19 W. R., 333**

53. ——— Suit for possession without demand of possession.—Decision by Appellate Court without raising issue on point not raised.—A suit to recover possession of land in the wrongful possession of the defendant having been decreed by the first Court, the decision was reversed by the lower Appellate Court because it did not appear that there had been any demand of possession.—*Held* that, before deciding the case in this way, the lower Appellate Court ought to have framed an issue as to whether there had been a demand of possession. **MAHOMED BASID KHAN CHOWDHRY v. JODOO MIR-DHA** **20 W. R., 401**

54. ——— Suit for enhancement of rent.—Raising issue as to notice of enhancement.—Procedure.—In a suit for arrears of rent at enhanced rates, where it is found that a single notice has been issued although there are two holdings at two rents, the Court should frame an issue which will allow the plaintiffs and the defendant, if they wish it, to give evidence—the former to show that the two holdings are now held at one consolidated rent, and it may be enhanced as of one holding—and the latter that he is entitled to have the enhancement made in such a way that he may give up one and retain the other. **NIDHOO MOHAR JOGISEN v. KISHEN NATH BANERJEE** **20 W. R., 442**

55. ——— Suit for fees for officiating at marriages.—Duty of Judge.—Framing issues.—Plaintiff sued to recover certain fees from defendant, alleging that he had a right to officiate at marriages among the defendant's caste-people, and that, according to this right, he (plaintiff) had officiated at the marriage of the defendant's son at his request. The lower Court raised the issue, whether the plaintiff was entitled to the right alleged by him, and the issue was accepted by the parties without any objection. That Court held that, albeit plaintiff was head or senior of the caste, he could not have any right in that character to any fees at weddings, and accordingly dismissed the suit. In appeal the District Judge found that, if any such right had ever existed in the plaintiff, it had been taken away by Act XIX of 1844; he was also of opinion that the plaintiff had not been invited to assist and did not assist at the marriage ceremony in question, and he affirmed the decree of the Court below. *Held* by the High Court, in reversal of the decrees of the lower Courts, that Act XIX of 1844 did not apply to the case, and that the District Judge was bound to decide the question really involved in the issue, *viz.*, whether, invited or uninvited, plaintiff was entitled by custom to the fees claimed by him. **APAYE v. RAMA** **I. L. R., 3 Bom., 210**

ISSUES—continued.**6. OMISSION TO SETTLE ISSUES.**

56. ——— Omission to raise proper issues.—Civil Procedure Code, 1859, ss. 139-141.—Practice of Privy Council.—In a suit raising issues of fact it did not appear from the record transmitted from India that the Judge of the Zillah Court had, in conformity with the Code of Civil Procedure, VIII of 1859, sections 139-141, settled or recorded the issues in the suit, although he allowed evidence in the cause to be taken. In such circumstances the Judicial Committee postponed the hearing of the appeal until a certified copy of the proceedings in the cause should be transmitted, and in the alternative, of no such issues being settled, set aside the decree of the Sudder Court at Agra, with directions to that Court to remand the suit to the Lower Court to be tried upon issues to be settled and recorded in conformity with the provisions of Act VIII of 1859. **REWUN PERSHAD v. JANKER PERSHAD**

[11 Moore's I. A., 25]

57. ——— Omission to raise issue on point in dispute.—Parties unprejudiced.—Where the Court found that the defendant was not prejudiced by the fact that no issue was framed on a certain question, it confirmed the decision of the Court below. **NATTAM VENKATARATNUM alias BALLAKONDA VENKATA NARAYANA ROW v. NATTAM RAMAIAI alias BALLAKANDA RAMA ROW**

[2 Mad., 470]

58. ——— Omission to frame issues.—Ground for new trial.—Where, on an appeal, the counsel for the appellant admitted he could not succeed on the merits, as the evidence stood on the record, and their Lordships were of opinion that substantial justice had been done, the mere omission to settle issues by the Court of first instance, which was not made a ground of appeal to the first Court of appeal, but was noticed and commented on by that Court, was held not to constitute a fatal mis-trial of the cause so as to render a new trial necessary. **REWUN PERSHAD v. JANKER PERSHAD**, 11 Moore's I. A., 25, commented on. **MITNA v. FUZLURUB**

[6 B. L. R., 148; 15 W. R., P. C., 15
13 Moore's I. A., 573]

MAHOMED BASIROOLLAH BHOONIA v. AHMED ALI
[22 W. R., 448]

59. ——— Insufficient ground for remand.—Where the lower Court had omitted to frame proper issues, the High Court refused to send the case back with a view to this being done, because the parties had not been prejudiced at all by the omission, both of them having adduced evidence upon all the questions upon which they were at difference. **PRELADH SINGH BAHADOOR v. BROUGHTON**

[24 W. R., 275]

60. ——— Remand of case.—Civil Procedure Code, s. 351.—In a suit for maintenance, where the objection was taken on appeal to the Privy Council, that no issues had been directed in the Courts below,—*Held* that an order of the High

ISSUES—continued.**6. OMISSION TO SETTLE ISSUES—continued.****Omission to frame issues—continued.**

Court, referring the matter to the lower Court for enquiry "to ascertain the amount of maintenance which might appear to be justly and properly payable, with reference to the means of the defendants and the other facts of the case, and to proceed to decision in the manner indicated in section 351 of the Civil Procedure Code," was equivalent to a direction of issues, and rendered any further issues unnecessary. *KACHEKALYANA RUNGAPPA KALAKKA TOLA UDIAR v. KACHIVIGAJAYA RUNGAPPA KALAKKA TOLA UDIAR*

[2 B. L. R., P. C., 72; 11 W. R., P. C., 33
12 Moore's I. A., 495]

7. DECISION ON ISSUES.

61. ——— Issues as bases of adjudication.—It is not the written statements of parties, but the issues framed under the Code of Civil Procedure, which ought to be the index of what has been and has to be adjudicated. *WISSE v. JUGGOBUNDU BOSE*

12 W. R., 229

62. ——— Necessity of deciding on all issues raised.—*Remand.*—In appealable cases the lower Courts should, as far as is practicable, pronounce their opinions on all the important points, for by forbearing from deciding on all the issues joined, they not unfrequently oblige the Privy Council to remand a case which might otherwise be finally decided on appeal. *TARAKANT BANERJEE v. PUDDOMONER DASSEN*

[5 W. R., P. C., 63; 10 Moore's I. A., 476]

63. ——— Issue, Determination of, when unnecessary.—*Civil Procedure Code (Act XIV of 1882), s. 204.*—In a suit for ejectment by a landlord against his tenant, the following amongst other issues were raised,—*viz.*, whether the notice alleged was sufficient, and whether the defendant was entitled to a right of occupancy. The Court of first instance dismissed the suit, finding upon the admitted facts that the notice alleged was insufficient, but also decided the other issues raised, and held that the defendant was not entitled to a right of occupancy. *Held* that the finding upon the question of notice based upon the admitted facts being sufficient to dispose of the whole case, the Court erred in proceeding to determine any other issues raised in the suit. *BARHAMDRO NARAIN SINGH v. MACKENZIE*

[I. L. R., 10 Calc., 1095]

64. ——— Decision of case at settlement of issues.—*Opportunity to produce evidence.*—It is competent to a Judge to determine a case on the day when the issues are settled, if he is satisfied that the evidence then before him is decisive of the matter in dispute, unless one of the parties makes a distinct objection to the Judge proceeding to a decision, and asks for an opportunity to produce evidence in support of his case. *SOORENDRO PERSHAD DOBEY v. JUGOBUNDRO PANDREY*

[22 W. R., 426]

ISTEMBRARI TENURES.

See CASES UNDER LEASE—CONSTRUCTION.

J**JAGHIR.**

See GHATWALI TENURE.

[I. L. R., 5 Calc., 389
I. L. R., 9 Calc., 187]

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R., 9 Bom., 561]

See GRANT—POWER TO GRANT.

[6 W. R., 121
18 W. R., 321]

See RESUMPTION—RIGHT TO RESUME.

[1 B. L. R., A. C., 170]

See RESUMPTION—MISCELLANEOUS CASES.

[12 B. L. R., 120]

1. ——— Nature of jaghir.—*Estate for life.*—*Hereditary grant.*—A jaghir must be taken, *prima facie*, to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. *GULABDAS JUGJIVANDAS v. COLLECTOR OF SURAT*

I. L. R., 3 Bom., 186

2. ——— Rights and interest of jaghirdar.—*Liability of, to sale in execution of decrees.*—*Bom. Reg. XII of 1805, s. 34.*—The rights and interests of a judgment-debtor in a jaghir granted under section 34, Regulation XII of 1805, cannot be sold in execution of a decree. The Court should sequestrate the property, and make the proceeds available during the life of the debtor for the payment of the money decreed (*dissentiente*, STREE, J.). *ZAMERLOODDEEN MAHOMED v. RUSSIK CHUND ADDY*

[W. R., F. B., 85]

JAILOR.

See CIVIL PROCEDURE CODE, 1882, s. 87.

[4 B. L. R., O. C., 51]

JAIN LAW.

See HINDU LAW—ADOPTION—WHO MAY ADOPT

10 Bom., 241

[I. L. R., 1 All., 688]

See HINDU LAW—ADOPTION—WHO MAY BE ADOPTED

I. L. R., 1 All., 288

See HINDU LAW—ADOPTION—SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS

I. L. R., 8 All., 319

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS, &c.

I. L. R., 3 All., 55

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL LAWS—JAINS.

[12 B. L. R., 235]

I. L. R., 4 Calc., 744

I. L. R., 8 All., 55

See SUCCESSION ACT, s. 331.

[I. L. R., 3 All., 55]

JALKAR.

See CASES UNDER FISHERY, RIGHT OF—

See LIMITATION ACT, 1877, s. 26 (1871,
s. 27) . . . I. L. R., 3 Cal., 276
[I. L. R., 5 Cal., 945
I. L. R., 9 Cal., 698]

See LIMITATION ACT, 1877, ART. 144—IN-
TEREST IN IMMOVABLE PROPERTY.
[I. L. R., 3 Cal., 276]

See RIGHT OF OCCUPANCY—ACQUISITION
OF RIGHT—SUBJECT OF ACQUISITION.
[I. L. R., 4 Cal., 767, 961
23 W. R., 433]

————— Suit to establish—

See LIMITATION ACT, 1877, ART. 144 (1871,
ART. 145)—INTEREST IN IMMOVABLE
PROPERTY . . . I. L. R., 3 Cal., 276

JAMABANDI.

See EVIDENCE ACT, 1872, s. 74.
[I. L. R., 4 Cal., 79]

JAMABANDI PAPERS.

See CASES UNDER EVIDENCE—CIVIL CASES
—JAMABANDI AND JAMA-WASIL-BAKI
PAPERS.

JAMA-WASIL-BAKI PAPERS.

See CASES UNDER EVIDENCE—CIVIL CASES
—JAMABANDI AND JAMA-WASIL-BAKI
PAPERS.

JOINDER.

See CASES UNDER MISJOINDER.

JOINDER OF CAUSES OF ACTION.

See CASES UNDER MULTIFARIOUSNESS.

See SPECIFIC RELIEF ACT, s. 27.
[I. L. R., 1 All., 555]

The sections of the old Code of 1859, relating to
joinder of causes of action (sections 8 and 9), have
not been re-enacted in the later Codes.

1. ——— Nature and value of suit as
affecting joinder of causes of action.—*Civil
Procedure Code, 1859, s. 8.*—Under section 8 of the
Code of 1859 it was decided that the words “cognis-
able by the same Court” referred to the nature of
the suit and not to its value; therefore a Principal
Sudder Ameen was held to have jurisdiction under
that section to try a suit for land and for mesne
profits, the entire claim not exceeding his jurisdiction,
although the value of the suit, so far as the claim
was for land, was below the value cognisable by
him. LUCHMEN PERSHAD DOBNEY v. KALLASOO

[B. L. R., Sup. Vol., 620]

2 Ind. Jur., N. S., 89: 7 W. R., 175

Overruling DHURUM RAWOOT v. RAMNATH
SAHOO 2 Hay, 585

See HARO CHUNDER TURKOOCHORAMONEE v.
ISSUR CHUNDER ROY . . . 6 W. R., 296

**JOINDER OF CAUSES OF ACTION—
continued.**

2. ——— Instalments of rent.—*Distinct
causes of action.*—Instalments of rent were held to
form different causes of action. RAM SOONDUR
SEIN v. KRISHNO CHUNDER GOOPTO

[17 W. R., 380]

SUTTO CHURN GHOSAL v. OBHOY NUND DOSS
[2 W. R., Act X, 31]

In a case, however, where the plaintiff was the
lessor, and the defendant the lessee, of certain land
under an agreement whereby the defendant agreed to
occupy the land for two years, and to deliver a
certain quantity of paddy at four specified periods,
defendant failed to deliver the paddy. In a suit
for rent,—*Held* that, although the plaintiff might have
sued for each instalment of rent as it fell due, the
aggregate of such unpaid instalments should be
deemed one cause of action. CHOCKALINGA PILLAI
v. KUMARA VIRUTHALAM . . . 4 Mad., 334

3. ——— Suit for possession and for
rent of a house.—A suit for possession of his house
and for rent were held to be causes of action properly
joined by a plaintiff in one suit. JAGOMOHAN SAHU
v. MANI LAL CHOWDERY . 3 B. L. R., Ap., 77

S. C. JUGO MOHUN SAHOO v. MONNE LALL CHOW-
DERY 11 W. R., 542

4. ——— Claims for a hundi and for
money paid in excess of rent.—It was held
that a claim for a hundi may be joined in one suit
with a claim for the return of money paid in excess
of rent due. BROJOKISHORE CHOWDERAIN v.
KHEMA SOONDURER DOSSEE . 7 W. R., 409

KINNOO MONNE DEBIA v. SHOHORAM SIECAR
[3 W. R., 128]

5. ——— Separate suits relying on
same title.—*Infringement of title.*—It is not the
title, but the infringement of it, which constitutes
the cause of action; and two suits are not neces-
sarily brought upon the same cause of action merely
because the title relied upon in both cases is
one and the same. JARDINE, SKINNER & Co., v.
SHAMA SOONDURER DEBIA . . . 13 W. R., 196

6. ——— Suit for rent of two different
portions of land.—In a suit for rent as of a single
howalah, where the defendants pleaded, and the Court
found, that the lands constituted two howalahs, it was
held not to be necessary to dismiss the suit, if justice
could be done between the parties on the other issues.
SUROOP CHUNDER CHOWDERY v. NIMCHAND
CHUCKERBUTTY 13 W. R., 284

7. ——— Different suits brought
against divers persons.—*Civil Procedure Code,
1859, s. 8.*—Section 8 of the old Code of 1859 pro-
hibited by implication the joinder of divers causes
of action against divers persons. PRAHLAD SEN v.
GOPIN BEBER 4 N. W., 40

TARA PROSUNNO SIECAR v. KOOMAREE BEBER
[23 W. R., 389]

JOINDER OF CAUSES OF ACTION—
continued.

8. ——— Suit to set aside survey award.—*Different independent proprietors dispossessed under same survey award.*—A village had been divided into four separate portions, with four different parties, who were afterwards dispossessed under one and the same survey award, which demarcated the village as appertaining to the defendant's estate. *Held* that the four parties could sue jointly. **ANUND CHUNDER GHOSH v. KOMUL NARAIN SINGH**

[2 W. R., 219]

9. ——— Suit for possession, for damages for refusal to register, and to enforce registration.—The owner of a share in a talook granted a sepatni thereof to the plaintiff, but before registration granted a sepatni to the Bengal Coal Company. In a suit against the owner and the Company for possession of the sepatni talook, for damages caused by the refusal to register, and also for compelling registration of the sepatni talook.—*Held* that three distinct causes of action were improperly joined. **PRABHURAM HAZRA v. ROBINSON**

[3 B. L. R., Ap. 49; 11 W. R., 398]

10. ——— Suit for possession of portion of property, and to set aside deeds relating to another portion.—*Misjoinder of causes of action.*—One of three widows of a Mahomedan sued the other two, together with her deceased husband's sons and other heirs, for possession of 18 out of 96 sehams of property left by the deceased, to which she was entitled by right of inheritance under the Mahomedan law; and to set aside two deeds of bai-mukasa, or gift in lieu of dower, one dated 28th July 1842, granted in favour of one widow over a part of the property in suit, and the other dated 14th March 1847, in favour of the other widow, over other portions of the same property. The lower Appellate Court dismissed the suit on the ground of a misjoinder of causes of action, and that there were two causes of action which could not be tried together under Act VIII of 1859, section 8. *Held, per KEMP, J.* (whose opinion as senior Judge prevailed), that there was no misjoinder of causes of action; that the case must be remanded to the Judge for trial on the merits. **AMIRAN v. ASIHUN**

[3 B. L. R., A. C., 190]

S. C. AMERUN v. WUSSEHUN . 12 W. R., 11

11. ——— Suits relating to different documents.—*Civil Procedure Code, 1859, s. 9.*—In trying together two distinct suits turning upon entirely separate documents, a lower Appellate Court was held to have reversed the procedure indicated in section 9 of the Code of Civil Procedure, 1859. **RAM NIDHIE KOONDOD v. GOLUCK CHUNDER MOSHANTO**

[11 W. R., 380]

12. ——— Distinct causes of action against distinct defendants.—Section 9 applied to a suit of the nature described in section 8 and not to a suit in which distinct causes of action against distinct defendants were improperly joined. **PRABHUL SEN v. GOPIN BEBER**

. 4 N. W., 40

KORILLA KORE v. BEHARY PATUCK

[12 W. R., 70]

II

JOINDER OF CAUSES OF ACTION—
continued.

13. ——— Direction to file separate plaints instead of one.—*Procedure.—Civil Procedure Code, 1859, s. 9.*—Where a plaintiff originally filed a plaint against the defendant and other persons, to invalidate a number of conveyances and sales, of which some had been confirmed by decrees, or had been made in execution of decrees, and which related to land in two separate sillahs, and the Subordinate Judge passed an order, purporting to be an order under section 9 of the Civil Procedure Code, for the trial of the several causes of action separately, and directed the plaintiff to file several plaints, and there being no difficulty in respect of the stamp duty chargeable on the institution of the suits, from plaintiff suing *in forma pauperis*, and the appellants having paid the proper stamp duty on the appeals.—*Held* that the results of such order and direction might be regarded as the institution of new suits, and that, as far as the suits were cognisable by the Court of the Subordinate Judge, or by the High Court in appeal, the High Court might, in the absence of any objection on the part of the parties, proceed to dispose of them. The High Court accordingly dismissed the suits relating to property in a district not cognisable in the Court of first instance; and in those appeals in which, by the reason of the amount being less than Rs. 5,000, the appeal lay to the District Judge, returned such appeals to the appellant for presentation in the proper Court. A direction in such a case to file separate plaints was not within the scope of section 9 of the Civil Procedure Code. That section did not require the plaintiff to file separate plaints, but provided for the separate trial of the several causes of action contained in the one plaint filed on the institution of a suit. **RUTTA BEBER v. DUMRU LALL**

. 2 N. W., 153

14. ——— Requisites to give right to join.—*Jurisdiction of Court over both causes of action.*—The right to join in one suit two causes of action against a defendant cannot be exercised unless the Court to which the plaint is presented has jurisdiction over both causes of action. **KEIMJI JIVRAJU SHETTU v. PURUSHOTAM JUTANI**

[I. L. R., 7 Mad., 171]

15. ——— Joinder of other suits with suits for recovery of immoveable property.—*Civil Procedure Code, 1859, s. 44.*—Section 44 of the Code of Civil Procedure, 1877, does not forbid the joinder of several causes of action entitling the plaintiff to the recovery of immoveable property, but a joinder with such causes of action or other causes of action of a different character except in the cases therein specified. **CHIDAMBARA PILLAI v. RAMASAMI PILLAI**

. I. L. R., 5 Mad., 161

16. ——— Suit for specific performance and return of money advanced on agreement.—*Civil Procedure Code, 1877, s. 44.*—*Misjoinder.*—The plaintiffs sued for specific performance of an agreement in writing which set forth, *inter alia*, that the defendants had agreed to sell, &c., under "certain conditions as agreed upon." Part of the purchase-money had been advanced by the plain-

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JOINDER OF CAUSES OF ACTION.—

Suit for specific performance and return of money advanced on agreement—continued.

tiffs to the defendants, for which the defendants had given their promissory notes; and the plaint contained a prayer that the defendants be ordered to pay over the amount of the notes. *Held* (affirming the decision of WILSON, J.) that there was no misjoinder of causes of action within the meaning of section 44, rule (a) of the Code of Civil Procedure (Act X of 1877). **CUTTS v. BROWN**. I. L. R., 6 Calo., 323 [5 C. L. R., 487; 7 C. L. R., 171]

17. — Suit for administration and accounts of separate estates.—Civil Procedure Code, 1882, s. 44.—The plaintiffs, who were the widow and daughter of A., sued the executors of the will of A.'s father (B.) for administration and account. There were four distinct subjects of claim in the plaint, *viz.*, (1) the estate of A.'s great-grandfather, (2) the estate of A.'s grandfather, (3) the jewels and ornaments which formed the stridhan of A.'s mother which were in A.'s possession at the time of his death, (4) a sum of Rs. 1,90,000 which it was alleged that B. had settled on A. at the time of his marriage. Subsequently to the filing of the suit the first plaintiff amended the plaint and claimed the jewels and ornaments, which formed the subject-matter of the third claim, as her own property, alleging that they had been presented to her on the occasion of her marriage. The plaint prayed (1) for the declaration that a certain portion of the estate in the hands of the first three defendants had been ancestral property in B.'s hands, (2) for an account and administration, (3) that the jewels and ornaments should be delivered up. *Held* that there was a misjoinder of causes of action, having regard to the provisions of rule (b), section 44 of the Civil Procedure Code (Act X of 1877). Part of the claim in the plaint was for a portion of A.'s estate, and was founded upon the plaintiff's alleged right as heir of A. The other portion of the claim in the plaint—*viz.*, that relating to the ornaments—had no reference to A.'s estate, and was personal to the first plaintiff herself. **ASHRAFI v. TYEB** [I. L. R., 6 Bom., 390]

JOINDER OF CHARGES.

1. — Charges for distinct offences. Separate charges and trials.—Several offences under one section of Penal Code.—In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section. **QUEEN v. SOBRAI GOWALLAH** [30 W. R., Cr., 70]

2. — Criminal Procedure Code, 1872, s. 453.—Practice.—Section 453 of the Criminal Procedure Code simply placed a statutory limit on the number of charges which may legally form part of a single trial. There was nothing in the section, however, to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within the year. **EMPRESS v. DHONONJOY BARAI**. I. L. R., 3 Calo., 540; 1 C. L. R., 478

JOINDER OF CHARGES—continued.

3. — Dacoity and receiving stolen property.—Distinct offences.—Penal Code, ss. 395, 412.—The practice of dividing the facts which constitute parts of one offence into several minor offences condemned. A person convicted of dacoity under section 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property transferred by commission of dacoity under section 412, when there is no evidence of the commission of more than one offence. **QUEEN v. SHAHABUT SHAIKH** [13 W. R., Cr., 42]

4. — Robbery on same night in several different places.—Criminal Procedure Code, 1872, s. 453.—Separate and distinct offences of same kind.—Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. **QUEEN v. ITWARREE DOMB**. 6 W. R., Cr., 83

5. — Theft and house-breaking by night.—Criminal Procedure Code, 1872, s. 453.—A person accused of theft on the 1st August and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. *Held* that the joinder of the charges was regular under section 453 of Act X of 1872, and the punishment was within the limits prescribed by section 314. **EMPRESS v. UMEDA** observed on by STRAIGHT, J. IN THE MATTER OF DAULATIA. I. L. R., 3 All., 305

6. — Offences of the same kind committed in respect of different persons.—Criminal Procedure Code (Act X of 1872), ss. 452, 453.—Where an accused was charged under one charge including four counts, *viz.*, (1), house-breaking by night with intent to commit theft in the house of A.; (2), theft from the same house; (3), house-breaking by night with a like intent in the house of B.; (4), theft from that house; and where he pleaded guilty to the first and third charges, *Held* that the case was within the terms of section 453, and that the words "offences of the same kind" are not to be limited by the explanation to that section, but include a case like this, where a man has within a year committed two offences of house-breaking. *Held*, also, that the words "offences of the same kind" are not limited to offences against the same person. *Per* FIELD, J.—The explanation to section 453 must be understood as extending and not as limiting the meaning of that section. *Per* NORRIS, J.—Care should be taken that accused persons are not prejudiced by charges being joined, and the Court should at all times be anxious to lend a willing ear to any application upon their behalf for separation of charges, and for separate trials upon separate charges. **EMPRESS v. MARARI**, I. L. R., 4 All., 147, dissented from. **MANU MIYA v. EMPRESS** [I. L. R., 9 Calo., 371; 11 C. L. R., 52]

JOINDER OF CHARGES—continued.

7. ———— **Theft, receiving stolen property, giving and receiving illegal gratification, and false evidence.**—*Criminal Procedure Code, 1872, s. 452.—Separate charges.—Distinct offences.*—The accused persons were tried on 27 charges, comprising the offences of theft, abetment of theft, and receiving stolen property, in 1872-73; similar offences in 1873-74; similar offences in 1874-75; the giving and receiving of illegal gratifications to and by public servants in 1874-75; and, finally, the fabrication and abetment of fabrication of false evidence in 1876. One of the accused was convicted on two heads of charge, and the rest acquitted. The convicted appealed against his conviction and sentence; and the Government appealed against his acquittal on the other heads as well as against the acquittal of the rest. *Held* that the trial was irregular under section 452 of the Code of Criminal Procedure; and so would be the hearing of the appeal. The High Court, however, heard the appeal in respect of offences in 1874-75 only, it appearing that this course did not prejudice the accused persons who had been fully and fairly tried for those offences. *QUEEN v. HANMANTA*. **I. L. R., 1 Bom., 610**

8. ———— **Receiving, retaining, and dealing in stolen property.**—*Criminal Procedure Code, 1872, s. 453.—Penal Code, ss. 411, 413.—Offences of different kinds.—Procedure.*—A prisoner cannot be tried at the same trial for receiving or retaining (section 411, Penal Code), and habitually receiving or dealing in (section 413) stolen property. The proper course is to try the accused first for the offences under section 411, and if he is convicted, to try him under section 413, putting in evidence the previous convictions under section 411, and proving the finding of the rest of the property in respect of which no separate charge under section 411 could be made or tried by reason of the provisions of section 453 of the Criminal Procedure Code. *IN THE MATTER OF THE PETITION OF UTTOM KOONDOD.* *EMPERESS v. UTTOM KOONDOD*

[**I. L. R., 8 Calo., 634; 10 C. L. R., 466**

9. ———— **Rioting and hurt.**—*Penal Code, ss. 147, 323.—Offence made up of several offences.*—Rioting and hurt in the course of such rioting are distinct offences and each offence is separately punishable. *EMPERESS OF INDIA v. RAM ADHIN*

[**I. L. R., 2 All., 139**

10. ———— **Criminal Procedure Code, s. 454.—Committal on two separate charges.—Trial as for one offence.—Separate trial.**—Where persons are charged with rioting and also with causing hurt, although they may be tried as for one offence under section 454 of the Criminal Procedure Code, it is not illegal to try them for both offences separately. *IN THE MATTER OF THE PETITION OF AMIRUDDIN.* *AMIRUDDIN v. FABID SARKAR*

[**I. L. R., 8 Calo., 481**

11. ———— **Abandonment of child and culpable homicide.**—*Penal Code, ss. 304, 317.—Exposure of child.*—Where a mother abandoned her child, with the intention of wholly abandoning it and

JOINDER OF CHARGES.—Abandonment of child and culpable homicide—continued.

knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment,—*Held* that she could not be convicted and punished under section 304 and also under section 317 of the Penal Code, but section 304 only. *EMPERESS OF INDIA v. BANWI*. . . **I. L. R., 2 All., 849**

12. ———— **Cheating different persons.**—*Criminal Procedure Code, 1872, s. 453.—Joinder of charges.—Offences of the same kind committed in respect of different persons.*—*M.* was accused of cheating *G.* on two different occasions and also of cheating *K.* on a third occasion. The three offences were committed within one year of each other; and *M.* was charged and tried at the same time for the three offences. *Held* that such joinder of charges was irregular, inasmuch as the combination of three offences of the same kind, for the purpose of one trial, can only be where such offences have been committed in respect of one and the same person, and not against different prosecutors, within the period of one year, as provided in the Criminal Procedure Code. *EMPERESS OF INDIA v. MURARI*

[**I. L. R., 4 All., 147**

13. ———— **Misappropriation of money at different times.**—*Postmaster—Criminal Procedure Code, ss. 233, 234.—Offences of the same kind committed in respect of the same person.*—Where a postmaster was accused of having, on three different occasions within a year, dishonestly misappropriated moneys paid to him by different persons for money orders,—*Held* that the offences of which such person was accused being the dishonest misappropriations by a public servant of public moneys (for as soon as they were paid they ceased to be the property of the remitters), such offences were "of the same kind," within the meaning of section 234 of the Criminal Procedure Code, and such person might therefore, under that section, be charged with and tried at one trial for all three offences. *EMPERESS v. MURARI, I. L. R., 4 All., 147, observed on.* *QUEEN-EMPERESS v. JUALA PRASAD*. **I. L. R., 7 All., 174**

14. ———— **Framing incorrect record, forgery, and using forged document.**—*Penal Code (Act XLV of 1860), ss. 167, 466, 471.—Separate trials.—Offences of the same kind.—Amendment of charge.*—The prisoner was committed for trial on fifty-five charges, including three charges under sections 167, 466, and 471 of the Penal Code. At the trial before the District Judge sitting with assessors, the Court informed the prisoner that the trial would be confined to the three charges last mentioned. The prisoner was convicted on these, but the Court allowed evidence to be adduced by the prosecution on all the remaining charges, and in respect of these the prisoner was acquitted. On appeal to the High Court,—*Held* that the District Judge should have exercised the powers conferred on him by sections 445 and 446 of the Code of Criminal Procedure, and then have proceeded to hold separate trials; that he should not have tried together the charges under sections 167 and 466 of the Penal Code, as the offences

JOINDER OF CHARGES.—Framing incorrect record, forgery, and using forged document—*continued*.

were not of the same kind within the meaning of section 453 of the Code of Criminal Procedure: but the convictions on these charges were upheld, as it did not appear that the prisoner had been prejudiced by the mode of trial adopted. **IN THE MATTER OF THE PETITION OF SEENATH KUR. EMPRESS v. SEENATH KUR**

[I. L. R., 8 Calo., 450; 10 C. L. R., 421

15. ——— Offences one of which is a summons and the other a warrant case.—*Summons and warrant cases.*—*Criminal Procedure Code, ss. 217 and 253.*—*Procedure.*—In the investigation of a complaint, which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons and the other a warrant case, the procedure should be that prescribed for warrant cases. **RAJNARAIN KOONWAR v. LALA TAMOLI RAUT** . . . I. L. R., 11 Calo., 91

JOINT ANCESTRAL BUSINESS.

See CASES UNDER HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

JOINT CONTRACTORS, SUIT AGAINST—

See CONTRACT ACT, s. 43.

[I. L. R., 3 Calo., 353
I. L. R., 5 Mad., 37, 138
25 W. R., 419

JOINT DEBTOR.

See CASES UNDER CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

See LIMITATION ACT, 1877, ART. 12 (1871, ART. 14) . . . I. L. R., 2 Calo., 93

See CASES UNDER LIMITATION ACT, 1877, ART. 179—JOINT DEBT—JOINT JUDGMENT—DEBTORS.

JOINT DECREE.

See CASES UNDER CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

See CASES UNDER EXECUTION OF DECREE—JOINT DECREE, EXECUTION OF AND LIABILITY UNDER.

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1859, s. 20)—JOINT DECREE.

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See CASES UNDER PARTIES—PARTIES TO SUITS—JOINT FAMILY.

See CASES UNDER SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

JOINT PROPERTY.

See CASES UNDER CO-SHARERS.

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

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[3 B. L. R., A. C., 396

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[1 L. R., 1 Cal., 219

1. APPOINTMENT OF JUDGE.

1. ——— Consent of Governor General.—*Act XXIX of 1845.—Ratification.*—The consent of the Governor General in Council, as required by section 5 of Act XXIX of 1845, to the appointment of a Joint Judge had to be given before the appointment was made. The doctrine of subsequent ratification does not apply in a criminal case. *REG. v. RAMA BIN GOPAL* . 1 Bom., 107

2. DUTY OF JUDGE.

2. ——— Trial of question of fact.—*Ground for decision.—Private knowledge or information.—Public rumour.*—In trying a question of fact, no Judge is justified in acting principally on his own knowledge and belief, or public rumour, and without sufficient legal evidence. *MERTHUN BIBEE v. BUSHNEE KHAN*

[7 W. R., P. C., 27: 11 Moore's I. A., 213

3. ——— Private knowledge or information.—A Judge ought not to import his

JUDGE—continued.

2. DUTY OF JUDGE—continued.

Trial of question of fact—continued.

own private knowledge or opinion into a case, but ought simply to decide the issues before him and on the evidence before him. *MEHEROONISSA v. BHASHAYE MEERDHA* . 2 W. R., Act X, 29

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[7 Bom., Cr., 50

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4. ——— Knowledge of facts.—*Judge as a witness.*—A Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts. *HURPURSHAD v. SHEO DYAL. RAM SAHOY v. SHEO DYAL. BALMOKUND v. SHEO DYAL. RAM SAHOY v. BALMOKUND* . 1 L. R., 3 I. A., 259: 26 W. R., 55

5. ——— Judicial notice.—*Judgment of proper Court.*—It is within the province of a District Judge to know, and it is his business to declare if he knows, whether a decree, produced before him, of a Court within his district, was obtained in a proper Court and is such as he can take judicial notice of. *BUKSHOOLAH CHOWDEY v. HUR CHUNDER CHUND* . 16 W. R., 248

6. ——— Opinion of assessor.—*Personal knowledge.*—A Sessions Judge should not import into his judgment the opinion of an assessor derived from personal knowledge and unsupported by evidence on the record. *QUEEN v. RAM CHURN KURMOKAR* . 24 W. R., Cr., 28

3. POWER.

7. ——— Power of, to delegate to assessors examination of witnesses.—In a case of the assessors viewing the scene of the offence the Judge cannot delegate to them his power of examining witnesses on the spot. *QUEEN v. CHUTTERDHARE SINGH* . 5 W. R., Cr., 59

8. ——— Pronouncing judgment out of Court.—*Irregularity in criminal case.*—Where a Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment which he did at his private house.—*Held* that the Judge was not competent to quash the sentence on this ground and to order a new trial by the Magistrate, his power being limited to refer the case for consideration of the High Court under section 434, Criminal Procedure Code, 1861. *GOVERNMENT v. HOLASEE SINGH*

[1 Agra, Cr., 17

9. ——— Holding cutocherry in Munsiff's Court.—*Irregularity in trial of civil case.—Consent of parties.*—Where a District Judge took advantage of his presence in the locality, and heard and decided a suit in the Munsiff's Court, which had originally been instituted in that Court, but subsequently transferred to the Judge's Court for trial, and it appeared that the course taken was with the consent, implied, if not express, of both parties, who

JUDGE—continued.**3. POWER—continued.****Holding cutcherry in Munsiff's Court—continued.**

were represented at the hearing.—*Held* that the District Judge was justified in taking the course he had done. **MADHARY v. GOBURDHUN HULWAI**

[**I L. R., 7 Calo., 694; 9 C. L. R., 303**

10. ——— Deciding case on evidence taken by his predecessor.—Irregularity in criminal case.—In the case of several prisoners who were tried by a Sessions Court consisting of a Judge and assessors, the latter convicted them, which finding was recorded by the Judge. The Judge, however, postponed giving judgment and left the district without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners. *Held* that the conviction was not valid and the trial had not been completed. The High Court accordingly set aside the conviction and ordered the re-trial of the prisoners upon the charges upon which they were committed for trial. **QUEEN v. GOFI NOSHYO**

[**21 W. R., Cr., 47**

See **TARADA BALADU v. QUEEN**

[**I L. R., 3 Mad., 112**

QUEEN v. RUGHONATH DOSS

[**23 W. R., Cr., 59**

11. ——— Power of Judge to deal with evidence taken by his predecessor.—Civil Procedure Code, s. 191.—Hearing of suit.—A Subordinate Judge, having taken all the evidence in a suit before him, adjourned the case to a future date for disposal. Upon the date fixed a further adjournment was made. The Subordinate Judge, at this stage of the proceedings, was removed, and a new Subordinate Judge was appointed. *Held* that the trial, so far as it had gone before the first Subordinate Judge, was abortive, and, as a trial, became a nullity. *Held*, also, that the duty of the second Subordinate Judge, when the case was called on before him, was to fix a date for the entire hearing and trial of the case before himself; that he might, at the request of the pleaders, have fixed the same day upon which the case was called on and proceeded to try it at once; and that the trial should then have proceeded in the ordinary way, except that the parties would be allowed, under section 191 of the Civil Procedure Code, to prove their allegations in a different manner. **JAGRAM DAS v. NARAIN LAL, I. L. R., 7 All., 867**, referred to. **AFZAL-UN-NISSA BEGAM v. AL ALI**

[**I L. R., 8 All., 35**

12. ——— Civil Procedure Code, 1882, s. 191.—Hearing of suit.—Trial.—Death or removal of Judge during suit.—Procedure to be followed by new Judge.—The trial of a suit before a Subordinate Judge was completed except for argument and judgment, and a date was fixed for hearing argument. At this point a new Subordinate Judge was appointed, and he passed an order directing a further adjournment and fixing a particular date for disposal of the case. After some further ad-

JUDGE—continued.**3. POWER—continued.****Power of Judge to deal with evidence taken by his predecessor—continued.**

jourments, the Subordinate Judge delivered judgment, having heard argument on both sides upon the evidence taken by his predecessor. The District Judge having on appeal upheld the Subordinate Judge's decision, a second appeal was preferred to the High Court, and an objection was raised on the appellant's behalf that the proceedings taken before the Subordinate Judge were void, and he could not be said to have tried the case, inasmuch as no evidence was taken before him, and his judgment was based solely on evidence recorded by his predecessor. No objection of this kind was taken in either of the Courts below. *Held* by the Full Bench, that, with reference to the grounds of appeal, and under the circumstances of the case, the officer who passed the decree in the Court of first instance had jurisdiction to deal with and determine the suit in the mode in which he did. **JAGRAM DAS v. NARAIN LAL, I. L. R., 7 All., 867**; and **AFZAL-UN-NISSA BEGAM v. AL ALI, I. L. R., 8 All., 35**, discussed. *Per* STRAIGHT, *Offg. C. J.*, that as no objection was raised before the Subordinate Judge to his taking up and dealing with the case in the mode in which he did, but the evidence was discussed and criticised on both sides, there had been a waiver on the part of the appellant in reference to the action of the Subordinate Judge of which he now sought to complain. *Per* OLDFIELD, *J.*, that where a Judge takes up a trial begun by another, although the law permits him to deal with the evidence taken by his predecessor as if he himself had taken it down, he must deal with it judicially, and try the cause as though it had come before him in the first instance, and there must be a hearing of the entire case before himself; and in every case it has to be seen whether, as a matter of fact, there has been a real trial and hearing of the entire case by the Judge; and if the evidence previously taken was not judicially dealt with, counsel heard upon it, and the entire case fully heard and tried, there has been no trial in the legal sense of the word, and the proceedings must be set aside. **JAGRAM DAS v. NARAIN LAL, I. L. R., 7 All., 867**; and **AFZAL-UN-NISSA BEGAM v. AL ALI, I. L. R., 8 All., 35**, followed. *Per* MAHMOOD, *J.*, that although it is true that "a trial must be one, and must be held before one Court only," the identity of the Court is not altered by a new Judge being appointed to preside in such Court; that when a trial goes on for more than one day, each day constitutes a separate hearing, and that such hearings cannot be treated as a trial heard on the original date; that the Civil Procedure Code does authorise a Judge to take up a case which has been partly heard before his predecessor, and to continue it from the point at which his predecessor left off; that where the Judge who has partly heard a case dies or is removed, the trial, so far as it has gone before him, is neither abortive nor becomes a nullity; that the new Judge is not required to fix a day for the entire hearing of the suit before himself, nor is there anything to prevent him from taking up a trial which has been partly heard by his predecessor, and to proceed with it as if it had been commenced

JUDGE—continued.**3. POWER—continued.****Power of Judge to deal with evidence taken by his predecessor—continued.**

before himself; that the Code does not recognise such procedure as amounting to separate trials; that the Judge who succeeds another after a trial which has partly proceeded before his predecessor is not bound to fix a new day for commencing the trial *de novo*, nor should the trial proceed before the new Judge as if the day were the first on which the case had ever come on for hearing; that the evidence recorded by the preceding Judge, by the mere fact of being upon the record, is *ipso facto* evidence in the cause, and could, under section 191 of the Code, be treated by the succeeding Judge "as if he himself had taken it down or caused it to be made;" that when the case comes on for hearing before the new Judge, there is no necessity for putting in the depositions of witnesses which, though taken by his predecessor, are already upon the record; that such depositions must be dealt with as materials of evidence before the new Judge; that a judgment and decree upon such evidence are neither illegal nor absolute nullities, there being no want of jurisdiction; that when such judgment and decrees are passed, the Court of first appeal is prohibited by section 564 of the Code to order a trial *de novo*, but is bound by section 565 of the Code to decide the appeal upon the evidence on the record; that where further issues are directed to be tried, or additional evidence is to be taken, the Court of Appeal is bound to act according to the provisions of sections 566, 568, and 569 of the Code, but cannot order a new trial; that even when there has been an irregularity on the part of the first Court in receiving or rejecting evidence, the provisions of section 578 of the Civil Procedure Code and section 167 of the Evidence Act prohibit the reversal of a decree and the remand of a case for new trial, unless the irregularity affects the merits of the case or the jurisdiction of the Court. *Jagran Das v. Narain Lal*, I. L. R., 7 All., 857; and *Afzal-un-nisa Begum v. Al Ali*, I. L. R., 8 All., 85, dissented from. *JADU RAI v. KANIZAK HUSAIN*

[I. L. R., 8 All., 576]

13. ——— Power of, to try case irregularly by consent of parties.—Determination of case by Judge who has not taken evidence in it.—The parties to a suit which is being tried in a Court of first instance have a right to insist upon having all the advantages which attach to a public hearing of the whole case and the examination of all the witnesses in open Court before the Judge who is judicially to determine the matter in dispute between them, although they may, either expressly or impliedly, consent to the suit being determined by a Judge who has not been present throughout the trial, and to his taking into consideration evidence which has not been given before him. *SOORENDRO PERSEHAD DOBEY v. NUNDUN MISSEER* **21 W. R., 196**

4. QUALIFICATIONS AND DISQUALIFICATIONS.

14. ——— Disqualification.—*Interest in case.*—Judges should not try cases in which they have

JUDGE—continued.**4. QUALIFICATIONS AND DISQUALIFICATIONS—continued.****Disqualification—continued.**

any personal interest. *CALCUTTA STEAM TUG CO. v. HOSSAIN IBRAHIM BIN JOHUR*

[Bourke, O. C., 273]**QUEEN v. BOIDONATH SINGH . 3 W. R., Cr., 29****15. ——— Interest in case.**

—*Municipal cases.—Magistrate also Vice-Chairman of Municipality.*—Where a Magistrate was also Vice-Chairman of a Municipal Committee, it was held he could impose fines under Bengal Act III of 1864. *ANONYMOUS* **3 W. R., Cr., 33**

16. ——— Interest in case.

—*Judge as a witness.*—The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailor was, by the Magistrate's order, placed on trial before a Bench of Magistrates, consisting of the District Magistrate himself, *L.*, the Officiating Superintendent of the Jail, and three other Honorary Magistrates. The prisoner and his pleaders were alleged to have stated before the commencement of the trial, on being questioned, that they had no objection to the composition of the Bench, but after the charges had been framed, the prisoner's counsel objected to the Bench as formed. The District Magistrate directed the Government Pleader to prosecute, and both the District Magistrate and *L.* gave evidence for the prosecution. After the case for the prosecution was closed, two formal charges were drawn up,—namely, that the prisoner had debited Government with the price of more oil-seed than he actually purchased, and that he had received payment for certain oil at a higher rate than he credited to Government. The moneys, the receipt of which were the subject of the first charge, were obtained by the prisoner on the strength of certain vouchers which he had induced *L.* to sign as correct, and *L.* had sanctioned the sale at the rates credited to Government. Upon the prisoner's giving the names of the witnesses he intended to call in his defence, *L.* was deputed by his brother Magistrates to examine some of them who were connected with the jail, in order "to guard against deviation," and the depositions so taken were placed on the record, "to be used by either party, though not themselves as evidence." The prisoner was convicted. On a motion to quash the conviction,—*Held* that *L.* had a distinct and substantial interest which disqualified him from acting as Judge. *Held*; further, that although a Magistrate is not disqualified from dealing with a case judicially merely because in his character of Magistrate it may have been his duty to initiate the proceedings, yet a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and where he himself discovered the offence and initiated the prosecution, and where he is one of the principal witnesses for the prosecution. *QUEEN v. BHOLANATH SEN*

[I. L. R., 2 Calc., 23; 25 W. R., Cr., 57]

17. ——— Disqualification of servant of Corporation of Calcutta to adjudicate

JUDGE—continued.**4. QUALIFICATIONS AND DISQUALIFICATIONS—continued.****Disqualification—continued.**

on summons at instance of Corporation.—*A.*, alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV of 1876, was summoned at the instance of the Corporation by *B.*, a servant of the Corporation and also a Justice of the Peace. The case was subsequently heard by *B.*, who convicted *A.* and sentenced him to pay a fine. *Held* that the proceedings and ultimate conviction of *A.* were illegal, inasmuch as *B.* being a servant of the prosecutor, i.e., the Corporation, had such an interest as might give him a bias in the matter, and that consequently he ought not to have sat as Justice of the Peace either at the granting or upon the hearing of the summons. *WOOD v. CORPORATION OF THE TOWN OF CALCUTTA*

[I. L. R., 7 Cal., 322; 9 C. L. R., 193]

See QUEEN v. TARIN CHURN BOSE

[21 W. R., Cr., 31]

where it was held that there was nothing absolutely illegal in a Municipal Commissioner, also editor of a newspaper, trying a case of which he had expressed a strong opinion in his paper.

18.—*Transfer of suits.*—*Judge exercising executive functions.*—*Bengal Civil Court's Act (VI of 1871), s. 25.—Act XIV of 1882, s. 25.*—An officer who exercises executive and judicial functions having himself dealt with a certain matter and formed and expressed an opinion upon its merits in his executive capacity, and having further advised and directed litigation in support of this view, is in consequence disqualified from dealing as a Judge with this same question when it comes into Court and has to be dealt with judicially. *LOBURI DOMINI v. ASSAM RAILWAY AND TRADING CO.*

[I. L. R., 10 Cal., 915]

19.—*Jurisdiction.*—*Bias.*—*Magistrate's jurisdiction where complainant is his private servant.*—*Legality of conviction and sentence passed by such Magistrate in such a case.*—The mere circumstance that a trying Magistrate is the master of the complainant, does not deprive the Magistrate of his jurisdiction, though it is expedient that such a complaint should be referred to another Magistrate. *IN RE THE PETITION OF BASAPA*

[I. L. R., 9 Bom., 172]

20.—*Qualification as witness.*—*Judge giving evidence in case.*—A Judge cannot give evidence in a case merely by making a statement of fact in his judgment. If he intends the Courts to act upon his statement, he is bound to make that statement in the same manner as any other witness. *ROUSSEAU v. PINTO*

7 W. R., 189

KISHORE SINGH v. GUNNESH MOOKERJEE

[9 W. R., 252]

See IN THE MATTER OF THE PETITION OF HURRO CHUNDER PAUL

20 W. R., Cr., 76

KALLONAS v. GUNGA GOBIND ROY CHOWDERY

[25 W. R., 121]

JUDGE—continued.**4. QUALIFICATIONS AND DISQUALIFICATIONS—continued.****Qualification as witness—continued.**

21.—*Competent witness in trial of case instituted by himself.*—A Judge is a competent witness and can give evidence in a case being tried before himself even though he laid the complaint acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. *QUEEN v. MUKTA SINGH*

[6 B. L. R., A. Cr., 7; 13 W. R., Cr., 60]

JUDGE OF HIGH COURT.

Grant of application for leave to institute suit which had been refused by another Judge.

—Leave to institute a suit relating to property out of the jurisdiction, as well as to property within such jurisdiction, was refused by one Judge on the 30th June 1874. The same application, in the same suit, between the same parties, relating to the same property, and founded on the same cause of action, was made before another Judge on the 15th December 1874, and the leave prayed for was granted. *Held* that the order should not have been made, and that it should be discharged. *VITHELINGA MUDELLY v. CUNDASAWMY MUDELLY*

8 Mad., 21

Power of—

See APPEAL IN CRIMINAL CASES—PROCEDURE.

9 B. L. R., Ap., 6

See BENGAL REG. V OF 1812, s. 26.

[B. L. R., Sup. Vol., 655]

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE.

5 B. L. R., Ap., 21

See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

JUDGE OF THE SUPREME COURTS IN INDIA.

Power of acting as Judge and Jury.—By the constitution of the Supreme Courts in India, the Judges for the purpose of the trial of an action sit as a Jury as well as Judges, and the same weight is to be given to a decision of the Judges, in such circumstances, as to the verdict of a Jury in England in which the Judge who tries the case makes no objection. *MENADEE MAHOMED CAZUN SERAZEE v. ALLY MAHOMED SHOOSBEY*

[6 Moore's I. A., 27]

JUDGES, DIFFERENCE OF OPINION BETWEEN—

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 575.

See LETTERS PATENT, HIGH COURT, CL. 15.

[4 B. L. R., A. C., 10, 181]

B. L. R., Sup. Vol., 694

13 W. R., 310

14 W. R., 293

I. L. R., 10 Cal., 108

JUDGES, DIFFERENCE OF OPINION BETWEEN—continued.

See LETTERS PATENT, HIGH COURT, CL. 36.
[I. L. R., 3 Bom., 204
14 Moore's I. A., 209]

See LETTERS PATENT, HIGH COURT,
N. W. P., CL. 10. I. L. R., 1 All., 181

See REFERENCE TO FULL BENCH.
[I. L. R., 3 Cal., 20]

JUDGMENT.

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1. CIVIL CASES	2769
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See LIMITATION ACT, 1877, ART. 177.
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———— Copy of, Deduction of time necessary for obtaining.

See CASES UNDER LIMITATION ACT, 1877,
s. 12, (1871, s. 18).

———— Notes of, to explain decree.

See DECREE—CONSTRUCTION OF DECREE
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———— Reversal of—

See CASES UNDER APPELLATE COURT—
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———— Variation of or addition to—

See CRIMINAL PROCEDURE CODE, 1882, s.
367 (1872, s. 464) I. L. R., 3 Mad., 48
[23 W. R., Cr., 49]

1. CIVIL CASES.**(a) WHAT AMOUNTS TO.**

1. ——— Record of impression or opinion on partial evidence.—Where a District Judge on appeal made an order of remand under Act VIII of 1859, section 356, that evidence might be taken on one of the points raised, and at the same time recorded the impression which his mind had received on the other parts of the case, it was held that the opinion so recorded was not a judgment on appeal. *BULORAM BABOO v. ISSUR CHUNDER BABOO* [23 W. R., 77]

2. ——— Memoranda of opinions.—*Resignation or death of Judge before judgment.*—Held, *per totam curiam*, that written opinions sent to the Registrar by Judges who had retired or died

JUDGMENT—continued.**1. CIVIL CASES—continued.****(a) WHAT AMOUNTS TO—continued.****Memoranda of opinions—continued.**

before the judgment in the case was pronounced in open Court, are not judgments, but merely memoranda of the opinions and arguments of such Judges. *MAHOMED AKIL v. ASADUNNISSA BIBER. MUTTY LALL SEN GWYAL v. DESKHAR ROY* [B. L. R., Sup. Vol., 774: 9 W. R., 1]

3. ——— Judgment written by Judge, and pronounced in Court by his successor.—A Subordinate Judge wrote out his judgment in a case, which had been heard before him, after he had been relieved from his office, and left the judgment to his successor to be pronounced in open Court. The judgment was pronounced in Court by the succeeding Subordinate Judge. An objection being taken in special appeal that the judgment read out by the succeeding Subordinate Judge was not a judgment according to Act VIII of 1859,—Held that the judgment was valid. *PARBUTTI v. BHIKUN* [8 B. L. R., Ap., 98]

S. C. PARBUTTI v. HIGGIN 17 W. R., 475

4. ——— Judgment given by successor by Judge getting promotion.—Remarks on the impropriety of a Principal Sudder Ameen, who, after hearing the evidence in a suit, was promoted in the same district from the second to the first grade and refrained from giving judgment, but left it to his successor for decision. *Quare per MARKBY, J.*—Whether such decision is legal. *RADHA NATH BANERJEE v. JODOO NATH SINGH* [7 W. R., 441]

(b) LANGUAGE OF.

5. ——— Proper language for judgment.—*Judge whose vernacular is English.*—A Judge whose vernacular language is English ought to write his decision in his own language, though to do otherwise does not affect its validity. *HUBO SOONDURY DABRE v. SREEDHUR BHUTTACHARJEE* [17 W. R., 352]

(c) FORM AND CONTENTS OF JUDGMENT.

6. ——— Oral judgment.—*Oral statement of intended judgment.*—A Judge may, at the close of the hearing of a suit, state at once orally the judgment which he intends to record and deliver. *ANONYMOUS* 5 Mad., Ap., 8

7. ——— Materials on which judgment should be founded.—*Civil Procedure Code, 1859; ss. 172, 183.*—*Examination of witnesses in lower Court.*—*Perusal of depositions.*—The meaning of section 183, Act VIII of 1859, taken in connection with section 172, is that the judgment is to be given upon the examination of the witnesses by the Judge himself in the Court of first instance, and not upon a perusal of depositions except those taken under section 178, and the subsequent sections, which are expressly allowed to be read in evidence at the hearing; and care should be taken, in

JUDGMENT—continued.**1. CIVIL CASES—continued.****(c) FORM AND CONTENTS OF JUDGMENT—continued.****Materials on which judgment should be founded—continued.**

the transfer of suits, and in the disposal generally of the business of the lower Courts, to prevent the necessity of re-summoning witnesses. **NARANBHAI VELJBHUKANDAS v. NAROSHANKAR CHANDRO SHANKAR** **4 Bom., A. C., 98**

8. ————— Decision on facts.

—**Reasons.**—In deciding on the facts of a case, Judges should not base their decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides. **TILUCKDHARE SINGH v. SAMOODRA SINGH** **6 W. R., 9**

9. ————— Necessity of distinct findings on material issues.—There must be a distinct finding one way or other on all the material issues in a case. **SHUENO MOYEE DOSSIA v. JOY NARAIN BOSE** **8 W. R., 481**

10. ————— Duty of Appellate Court as to judgments.—*Civil Procedure Code, 1859, s. 359.*—It is the duty of Appellate Judges to act so far in conformity with the provisions of the Code of Civil Procedure as is sufficient to show that the Court has dealt with each ground of appeal, and more especially to record distinct findings on questions of fact. **ANONYMOUS** **4 Mad., Ap., 56**

11. ————— General assent to judgment of lower Court.—*Duty of Appellate Court as to judgments.*—Where the Civil Judge, confirming a decree of the District Munsif, stated by way of judgment that he was of opinion that the decision of the Munsif was fair and equitable, the High Court on special appeal sent back the case with directions to the Civil Judge to record a judgment in substantial conformity with the provisions of the Code of Civil Procedure. **KRISTNA REDDY v. STEINIVASA REDDY** **4 Mad., Ap., 56, note**

12. ————— Duty of Appellate Court as to judgments.—An Appellate Court should take notice of all the specific objections argued before it, and not content itself with recording a general assent to a first Court's finding. **SHUMBHOONATH CHOWDHRY v. PROKASH CHUNDER DUTT** **[8 W. R., 272]**

13. ————— Judgment not in proper form.—*Civil Procedure Code, 1859, s. 359.*—*Illegal and defective judgment.*—A Judge's decision not being in conformity with the provision of section 359, Act VIII of 1859, was held to be illegal and defective. **RUGHOBUR SUHAI v. CHATTRAPAT** **[1 Agra, 73]**

IMBIT SINGH v. KOYLASHOO KOKR **[11 W. R., 558]**

14. ————— Civil Procedure Code, 1859, s. 359.—*Judgment of lower Appellate Court.*—*Omission to record decision on material*

JUDGMENT—continued.**1. CIVIL CASES—continued.****(c) FORM AND CONTENTS OF JUDGMENT—continued.****Judgment not in proper form—continued.**

points.—The Judge of the lower Appellate Court not having recorded his judgment as required by section 359 of Act VIII of 1859, the case was sent back to the lower Court for the Judge to state the points for decision, and to give his decision upon those points consecutively. **TATUR KHAWAS v. JAGANNATH PRASAD** . **7 B. L. R., Ap., 14: 15 W. R., 181**

15. ————— Judgment of Appellate Court.—The judgment of an Appellate Court should clearly and fully dispose of all the points in issue between the parties by a distinct finding on each of them. **BEAGBUT KHAN v. PUDDO BEWA** **3 W. R., 192**

DHUN RAE v. RAMPHUL RAE . **2 N. W., 109**

SOOKH RAJ SINGH v. TUFFAZOOL HOSSEN **[2 W. R., 142]**

16. ————— Reasons for decision.—*Civil Procedure Code, 1859, s. 359.*—Section 359, Code of Civil Procedure, made it incumbent upon an Appellate Court to set down distinctly the point or points on which it has to decide the appeal, and record its reasons for the decision it arrives at in each and all of these points. **SHURESSUR GHOSH v. SADHOO CHURN GHOSH** **15 W. R., 130**

RAJ CHUNDER BURMUN v. ROMA KANT CHUCKERBUTTY **15 W. R., 324**

17. ————— Civil Procedure Code, 1859, s. 359.—The judgment of an Appellate Court should state clearly the reasons of the conclusions therein contained. **CHUNDER KANT CHOWDHRY v. HURISH CHUNDER CHOWDHRY** **[1 W. R., 214]**

GGBURDHUN v. SADHOO **1 W. R., 244**

KARTICK NAPIIT v. PERSONOMOYEE NAPTINEE **[2 W. R., 77]**

DOOLEE CHUND v. OOMDA BEGUM **[18 W. R., 473]**

KHETTUR MOHUN GOSSAIN v. BHYRUB CHUNDER SHEET **3 W. R., 126**

TEILOCHUN DUTT v. ISHEN CHUNDER CHOWDHRY **[3 W. R., 176]**

HOSSEIN BUKSH v. AMEENA KHATOON **[16 W. R., 280]**

KORBAN ALI v. ASHAN ALI **4 W. R., 4**

SHATHUK PAUL v. GUDADHUR ROY. **[4 W. R., 100]**

GANPATRAM LAKHMIRAM v. JAICHAND TALAKCHAND **4 Bom., A. C., 109**

BHAGVATSANGJI JALAMSANGJI v. PARTABSANGJI AJJABHAI **4 Bom., A. C., 105**

18. ————— The reasons for their decisions must in all cases be recorded by the Judges of the High Courts in India. **KACHEKA-**

JUDGMENT—continued.**1. CIVIL CASES—continued.****(c) FORM AND CONTENTS OF JUDGMENT—continued.****Reasons for decision—continued.**

XYANA RUNGAPPA KALAKKA TOLA UDIAR v. KACHIVIGAJAYA RUNGAPPA KALAKKA TOLA UDIAR
[2 B. L. R., P. C., 72: 11 W. R., P. C., 33
12 Moore's L. A., 495]

19. Appellate Court.

—An Appellate Court is not bound to discuss *seriatim* the arguments adduced by a lower Court in support of its judgment, but need only give its own reasons for its own judgment. **INDRASATI KUNWARI v. MAHADBO CHOWDHRY**

[1 B. L. R., S. N., 2]

20. Reversal of judgment of lower Court.

—An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. **MAHADBO OJHA v. PARNESWAR PANDAY**

[2 B. L. R., Ap., 90]

MUNSOOB BIREH v. ALI MEAH . 17 W. R., 358

MAHOMED SALLIH v. NUSSEHROODDHEEN HOSSEIN
[21 W. R., 284]

21. Civil Procedure

Code, 1859, s. 359.—*Held*, by **MARKEY, J.**, that in saying that the “reasons” for the decision of an Appellate Court must be stated, section 359, Act VIII of 1859, meant not the reasons for coming to any conclusion of fact, but the reasons showing upon what points of fact or law the decision runs. The bare fact that a Judge had not given the reasons for his judgment is not in itself a ground of special appeal. **RAMESUR BHUTTACHARJEE v. BHANOO**

[12 W. R., 272]

22. Omission to state reasons in judgment.—*Civil Procedure Code (Act XIV of 1859), ss. 574, 584.*—The fact that the judgment of an Appellate Court is not drawn up in the manner prescribed by section 574 of the Civil Procedure Code is no ground for a second appeal under section 584, unless it can be shown that the judgment has failed to determine any material issue of law. **BISVANATH MAITI v. BAIDYANATH MANDUL**

[1 L. R., 12 Cal., 199]

23. Civil Procedure Code, 1859, s. 359.—The judgment of an Appellate Court must contain the points for determination, the decision thereupon, and the reasons therefor. It need not, under section 359 of the Code, contain a review or setting forth of the whole of the evidence. The propriety of giving an intelligent and clear account of the evidence in the judgment laid down. **NOOR MAHOMED v. ZUHOOR ALLY** . 11 W. R., 34

24. Finding of Appellate Court.—*Omission to give reasons.*—The finding of an Appellate Court not accompanied by reasons is not conclusive. **GOPALRAO GANESH v. KISHOR KALIDAS** . . . 1 L. R., 9 Bom., 527

See **KRISHNARAV YASHVANT v. VASUDEV APAJI GHOTIKAR** . . . 1 L. R., 8 Bom., 371

JUDGMENT—continued.**1. CIVIL CASES—continued.****(c) FORM AND CONTENTS OF JUDGMENT—continued.****Reasons for decision—continued.**

25. Omission to give reasons for order holding appeal barred.—Order discharged under the circumstances, the District Judge having given no reasons for making the order. **RAGHUNATH GOPAL v. NILU NATHAJI**

[1 L. R., 9 Bom., 452]

26. Judgment of Appellate Court.—It is not obligatory on an Appellate Court to meet categorically every one of the arguments advanced by the first Court in support of its decision. The meagreness of the judgment of a lower Appellate Court can only warrant a remand when the judgment does not show that the Court has considered the evidence. **KRISHENDRO ROY CHOWDREY v. DIGUMBUREN DEBIA CHOWDRAIN** . 16 W. R., 15

See **SHUMSHUBODDY v. JAN MAHOMED SIKDAR**
[21 W. R., 260]

27. Appellate Court confirming judgment.—An Appellate Court is bound to give reasons for deciding a specific point (in this case limitation) raised before it on appeal, even if it confirm generally the order of the Court below. **RADHA GOBIND KUR v. RAM KISHORE DUTT**

[8 W. R., 340]

28. Omission to give reasons.—*Appellate Court.*—*Civil Procedure Code, 1877, s. 574.*—Where the judgment of the lower Appellate Court dismissing an appeal was merely as follows: “the appeal is dismissed with costs”—the High Court set aside the decree on the ground that the Court had not complied with the provisions of section 574 of the Civil Procedure Code. **SRIKANT DRY v. HURI DAS PAL** . 11 C. L. R., 131

29. Affirming judgment of lower Court.—Where the decision of a case involves issues of fact, and the first Court has gone fully into the evidence and recorded its finding and decision, if the Appellate Court agrees with the conclusions of the Court below, the Appellate Court is not obliged by law to state in detail the reasons previously recited in which it concurs. **LALLA JUGGESHUR SAKROY v. GOPAL LALL** . . 15 W. R., 54

30. Civil Procedure Code, 1859, s. 359.—*Omission to give reasons.*—In a case decided on pure questions of fact, no point being left undetermined, in which the Judge in appeal endorsed the opinion of the first Court, without giving detailed reasons, the High Court did not consider it right to remand the case to the Judge to set forth in his judgment the same reasons which influenced the Court of first instance. **IMBIT LALL TRAKOOR v. NUCKSHED SUHAYE** . . . 10 W. R., 100

KULUMUTEE KOER v. JOWAHUR LALL
[11 W. R., 318]

31. Civil Procedure Code, 1859, s. 359.—Where a lower Appellate Court

JUDGMENT—continued.**1. CIVIL CASES—continued.****(c) FORM AND CONTENTS OF JUDGMENT—continued.****Reasons for decision—continued.**

took no notice in its decision of a large quantity of evidence of very considerable importance which had been urged before it as of the highest possible character, and gave no reasons for agreeing with the Court of first instance that the evidence in question had very little connection with the case, its judgment was held to be not a legal decision in the terms of section 359, Act VIII of 1859. **ADHREN MISSEER v. JOGRAJ MISSEER** **11 W. R., 312**

32. — Affirmance of decision of lower Court.—Decision on oral testimony.—A plaintiff is entitled to some opinion by the lower Appellate Court upon the oral testimony on his side. The mere affirmance of the decision of the first Court which considered the oral evidence in detail does not involve the adoption by the lower Appellate Court of the first Court's view of the oral testimony. **RAJOO v. RAJ COOMAR SINGH** **7 W. R., 137**

33. — Omission to give reasons.—As a matter of law, the decision of a lower Appellate Court cannot be said to be erroneous or fit to be reversed because the Judge has not, in reversing the decision of the Court below, categorically met and refuted the reasons on which that decision had proceeded; but such an omission may form a good ground for an application to the High Court to require the lower Appellate Court to set forth the reasons on which its judgment proceeded. **GOLAM HOSSEIN v. RAM DOYAL GHOSE** **12 W. R., 152**

34. — Civil Procedure Code, 1859, s. 359.—Ground for remand.—It is the duty of the Appellate Court when it reverses the decision of the first Court, and more especially when the judgment of the first Court is full and cogent, to point out the grounds on which it comes to a different conclusion. Where a District Judge had omitted to do so, and, having left the country, could not be required to supply the omission, the High Court, being unable to make the ordinary presumption that he had fully considered the evidence, set aside his judgment, and remanded the case to be heard in appeal *de novo*. **KRISTO CHUNDER CHUCKERBUTTY v. RAM BROMHO CHUCKERBUTTY** **20 W. R., 403**

35. — Duty of Appellate Court.—Transfer of Judge.—Irregularity in recording judgment.—The Civil Judge, in confirming a decision of the District Munsif, did not state the reasons upon which his judgment was founded, and the High Court remitted the case in order that the Civil Judge might record a judgment in accordance with the Civil Procedure Code. The Civil Judge had been appointed to another district; and when the case went down, the new Judge had the case re-argued before him, and reversed the decision of the Munsif. The High Court, under the circumstances, held that effect should be given to the first judgment, notwithstanding the irregularity. **KRISTNA REDDI v. SRINIVASA REDDI** **5 Mad., 174**

JUDGMENT—continued.**1. CIVIL CASES—continued.****(c) FORM AND CONTENTS OF JUDGMENT—continued.****Reasons for decision—continued.**

36. — Omission to give reasons.—Death of Judge before judgment.—A Deputy Collector having died before giving his reasons for a decree said to have been made by him, the whole of the subsequent proceedings were held to be bad, and the case was remanded to the Collector to be tried *de novo* upon the evidence upon the record. **NOBO CHUNDER BANERJEE v. ISHUR CHUNDER MITTER** **12 W. R., 254**

37. — Judgment of Appellate Court.—Omission to give reasons.—Remand under ss. 566, and 567, Civil Procedure Code, 1859.—Where the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the case to his successor for fresh trial. **ASSANULLAH v. HAFIZ MAHOMED ALI** [**I. L. R., 10 Calo., 932**]

38. — Judgment containing findings unnecessary for disposal of case.—Appellate Court.—Dismissal of suit.—Findings unnecessary for disposal of case.—Appeal by successful party.—Civil Procedure Code, 1859, s. 203.—When a suit has been dismissed on the merits in the Court of first instance, and that decision is upheld by the District Judge on appeal, merely on the ground of non-joinder, the District Judge should not record any findings in the appellant's favour on the merits of the case; and, if he does so, such findings will, on second appeal to the High Court, be expunged from the record. **NANDA LAL RAI v. BONOMALI LAHIRY** **I. L. R., 11 Calo., 544**

39. — Additions to judgment after delivery.—Adding reasons for decision.—It is irregular to add to a judgment once delivered when the effect of the addition is to alter the grounds on which the judgment proceeded. *Semble*,—A Judge may append to his judgment additional reasons, merely to show more fully the correctness of the decision at which he has arrived, though such a course is not strictly warranted by the Civil Procedure Code. **SHADDEN v. TODD, FINDLAY, & Co.** [**7 W. R., 236**]

40. — Final disposal on settlement of issues.—Omission to take evidence.—Where the Judge finally disposed of the case on the day fixed for the settlement of issues, without allowing the parties the opportunity to adduce evidence and fully ascertaining the facts,—*Held* that his judgment was illegal and defective. **GULZAR SHAH v. MEETAB SINGH** **2 Agra, 30**

(d) JUDGMENT GOVERNING OTHER CASES.

41. — One judgment governing several cases.—Filing judgment.—Where a judgment in one case governed other cases,—*Held* that

JUDGMENT—continued.**1. CIVIL CASES—continued.****(d) JUDGMENT GOVERNING OTHER CASES—continued.**

One judgment governing several cases—*continued.*

the filing of that judgment was a substantial compliance with the requirements of the law, and that the filing of a short judgment referring to the other judgment was merely formal, and the delay excusable. **MOTHOORNATH CHUCKERBUTTY v. KISHEN MOHUN GHOSH** . . . **W. R., 1864, Mls., 9**

BYRUBNATH SANDYAL v. HURE SOONDUREE DOSSEN . . . **W. R., 1864, Mls., 28**

(e) CONSTRUCTION OF JUDGMENT.

42. ——— Inconsistency in portions of judgment.—Ambiguity.—In construing a judgment, if a difficulty is found in reconciling the conclusion ultimately arrived at with the previous part, such part must be rejected. **BYKUNT CHUNDER CHUCKERBUTTY v. DHUNPUT SINGH**

[19 W. R., 104]

43. ——— Matter omitted in conclusion arrived at.—Former decisions of same Judge as guides.—Where the final sentence in a judgment of the High Court made no mention of a matter specified in the previous words, and the District Judge had the option of taking the latter to throw light on the former, or the former to be controlled by the latter, he was held to be entitled to follow the effect of previous judgments delivered by the same Judge of the High Court. **TARA CHAND BISWAS v. RAM JEEBUN MOOSTAFEE** . . . **22 W. R., 202**

(f) RIGHT TO COPIES OF.

44. ——— Right of parties to copy of judgment.—Translation.—Parties to a suit are entitled to receive copies of the original judgment, not merely a translation. **VARJIVAN RANGJI v. AJI DAJI** . . . **1 Bom., 165**

45. ——— Copies of judgment of Courts of Small Causes.—Judges of Courts of Small Causes were bound to give copies of their judgments to parties requiring them. **IBRAHIM FATTE ALI v. CHANDRA BEAU VALAD BAPUJI** . . . **7 Bom., A. C., 130**

46. ——— Right of strangers to copy of judgment.—Strangers to a suit may obtain as of course copies of judgments, decrees, or orders at any time after they have been passed or made. *See Circular Order, 2nd June 1875.* **IN RE BAMA CHURN GHOSAL** . . . **2 O. L. R., 553**

47. ——— Copies of Delay in furnishing.—Civil Procedure Code, s. 198.—Resolution of High Court, 6th July, 1872.—The plaintiff applied for the admission of a special appeal, and his application was refused on the ground that the time for the admission of the appeal had expired. It appeared that he had applied for a copy of the judgment and decree, but had been refused, as he had not put in a

JUDGMENT—continued.**1. CIVIL CASES—continued.****(f) RIGHT TO COPIES OF—continued.**

Copies of, Delay in furnishing—continued.

sufficient quantity of blank papers for copies. On appeal to the High Court,—*Held* the judicial officer was not justified in delaying the giving of copies until blank papers were put in. Such copies, by section 198 of Act VIII of 1859, and a resolution of the Court of 6th July 1872, are to be issued on production of the necessary stamps. **NILMONY SINGH v. CHINTAS MAHANTI**

[12 B. L. R., Ap., 8 : 20 W. R., 405]

2. CRIMINAL CASES.

48. ——— Illegal judgment.—Judgment pronounced by successor.—Re-trial.—Until the finding is recorded the trial is incomplete. If before the finding is recorded the presiding officer of a Court is removed, the successor cannot pass judgment upon consideration of the evidence recorded by the predecessor. **ANONYMOUS** . . . **4 Mad., Ap., 43**

49. ——— Necessity of findings on each charge.—Criminal Court.—Sessions Judge.—A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial. **QUEEN v. MAHOMED ALI** . . . **13 W. R., Cr., 50**

50. ——— To enter up findings on every head of charge is not only not illegal but the most convenient course. **ANONYMOUS** [6 Mad., Ap., 47]

51. ——— Reasons for decision.—Criminal Appellate Court.—Judgment in affirming conviction.—Although as a general rule it is not incumbent on an Appellate Court when confirming a decision to set forth its reasons in full, yet in the circumstances of a case any thing peculiar should be noticed. **REG. v. MORORA BRASKARJI** . . . **8 Bom., Cr., 101**

52. ——— Sessions Judges.—Sessions Judges should record their reasons for confirming, reversing, or modifying the sentences or orders of the Magistrates. **ANONYMOUS** [5 Mad., Ap., 12]

53. ——— Omission to give reasons.—Criminal Procedure Code (Act X of 1882), ss. 367-424.—A Sessions Judge, after hearing an appeal, gave the following judgment: "It is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The depositions have been gone through, and commented on at considerable length. The Court finds no ground for interference. The appeal is dismissed." *Held* that this was not a sufficient compliance with sections 367 and 424 of Act X of 1882, and that the case should be re-tried. **KAMRUDDIN DAI v. SONATUN MANDAL** [I. L. R., 11 Cal., 449]

54. ——— Judgment not in proper form.—Form and contents of judgment.—Criminal Appeal to Magistrate.—Criminal Procedure Code,

JUDGMENT—continued.**2. CRIMINAL CASES—continued.****Judgment not in proper form—continued.**

1882, ss. 367, 424.—A Magistrate, hearing an appeal from the Deputy Magistrate, gave the following judgment: "I see no reason to distrust the finding of the lower Court. The sentence passed, however, appears harsh. I reduce the term of imprisonment to fifteen days. The fines and terms of imprisonment in default will stand." *Held*, following the decision in *Kamruddin Dai v. Sonaton Mandal*, *I. L. R.*, 11 Cal., 449, that it was not a judgment within the meaning of sections 367 and 424 of the Criminal Procedure Code. **IN THE MATTER OF THE PETITION OF RAM DAS MAGHI**

[*I. L. R.*, 13 Cal., 110

55. ————— *Record sent to Appellate Court.—Criminal Procedure Code, 1882, s. 367, para. 5, proviso.—Record of heads of charge.—Judgment in trial by jury.—Held* that the words in section 464, Code of Criminal Procedure, that in trials by jury "heads" of the Judge's "charge" are to be recorded, must be construed reasonably, and include such statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the jury, or whether there has been any misdirection in the charge. **QUEEN v. KASIM SHAIKH**

[23 W. R., Cr., 32

56. ————— **Comments on conduct and evidence of police officers.—Sessions Judges.**—For the purposes of a judgment in Sessions trials the testimony or conduct of police officers concerned should be scrutinised and commented on in the same degree as those of other material witnesses, and no further. **QUEEN v. BUDRI ROY**

[23 W. R., Cr., 65

57. ————— **Note added to judgment of judicial officer in criminal case.—Irregularity.**—Observations by *STUART, C. J.*, on the impropriety of a judicial officer adding a "note" to his judgment in a criminal case impugning the correctness of the conclusion he has arrived at on the evidence in such case. **EMPRESS v. CHATTAR SINGH**

[*I. L. R.*, 2 All., 33

JUDGMENT IN REM.

See CASES UNDER ESTOPPEL—ESTOPPEL BY JUDGMENT.

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS.

1. ————— **Decision as to status of particular person or family.—Judgment inter partes.**—A judgment is not a judgment *in rem* because, in a suit by *A.* for the recovery of an estate from *B.*, it has determined generally concerning the *status* of a particular person or family; it is a judgment *inter partes*. **KATTAMA NACHAR v. RAJAH OF SHIVAGUNGAH**

[2 W. R., P. C., 31
[9 Moore's I. A., 539

JUDGMENT IN REM—continued.

2. ————— **Rule making judgments conclusive.—Exceptions to rule.**—The rule which makes a judgment conclusive against parties, and those who claim under them, is subject to certain exceptions which are the offspring of positive law, and the reason of the exception may be generally stated to be that the nature of the proceedings by which there is a fictitious, though not unjust, extension of parties, renders it proper to use the judgment against those not formally parties. The rule as to judgments *in rem*, except in some peculiar cases, results from the nature of the proceedings; and before attempting to apply the rule in this country, consideration should be given to the question whether there are Courts so proceeding as to warrant the application of the doctrine of decrees *in rem*. Mr. Smith's definition of a judgment *in rem* discussed and dissented from, and the authorities in English and Roman law upon the subject examined and commented upon. **YARAKALANMA v. ANAKALA NARANKA**

[2 Mad., 276

3. ————— **Judgments of mofussil Courts.—High Court.—Evidence.**—In a suit by *E. C.* against *D.*, the widow of *E. N.*, to set aside alienations by *D.* and to establish his title as reversionary heir to the property left by *E. N.*, on the ground that *E. N.* had been adopted by *J. L.*, deceased, and that, on the death of *E. N.* without issue, the right accrued to *E. C.* as an agnate of *J. L.*, it was found that *E. N.* had been adopted by *J. L.*, and that *E. C.* was reversionary heir. In a subsequent suit by *E. L.* against *E. C.* for a declaration of his right as heir to *E. N.* and for possession of the property on the ground that *E. N.* had not been adopted by, but took the property by gift from, *J. L.*,—*Held* that the judgment in the former suit was not admissible in evidence on the question of the adoption. *Semble*,—There are no judgments *in rem* in the mofussil Courts; and, as a general rule, decrees in those Courts are not admissible against strangers, to prove the truth of any matter directly or indirectly determined by the judgment, or by the finding upon any issue raised in the suit, whether relating to status, property, or any other matter. **KANHYA LALL v. RADHA CHURN**

[*B. I. R.*, Sup. Vol., 662

2 Ind. Jur., N. S., 229: 7 W. R., 338

4. ————— **Decision as to disputed succession to raj.—Power of Courts to give judgment in rem.**—In a case of disputed succession to a raj, *A.*, one son of the Raja, deceased, was put into possession under Act XIX of 1841, and a suit brought against him on behalf of another infant son *B.*, failed on proof of the legitimacy of *A.* A third son, *C.*, now claimed to be entitled against *A.*'s son, on the ground that *A.* was illegitimate, or was the offspring of an inferior marriage. *Held* the decree in the former suit was not a bar to the further prosecution of this suit, nor would it have been had the issues in the two suits been precisely the same. *Quære*,—Does there exist in India (exclusive of the particular jurisdictions which are exercised by the High Courts in matters of probate and the like, and which in the case of war might be exercised in matters of prize) any Court

JUDGMENT IN REM.—Decision as to disputed succession to raj—*continued.*

capable of giving a judgment *in rem*? JOGENDRO DEB ROY KUT v. FUNINDRO DEB ROY KUT

[11 B. L. R., 244: 17 W. R., 104
14 Moore's I. A., 367

5. ——— Decree declaring deed to be forged.—*Evidence.*—The plaintiff sued to set aside a decree which had been obtained against a co-sharer on a mokurrari pottah. The decree which declared the pottah to be a forgery was in a suit to which the plaintiff was no party. *Held*, the decree did not operate as a judgment *in rem*. GUNGADHUR ROY v. WOOMA SOONDEREE DOSSEE

[B. L. R., Sup. Vol., 672

2 Ind. Jur., N. S., 120: 7 W. R., 347

See LALA RANGAL v. DEONABAYAN TEWARY

[6 B. L. R., 69: 14 W. R., 201

6. ——— Decision on question of adoption.—The Full Bench decision, *B. L. R., Sup. Vol., 662: 2 Ind. Jur., N. S., 229: 7 W. R., 338*, merely laid down that a decision in a suit *inter alios* relating to a question of adoption was not a judgment *in rem* and was not conclusive; and that a judgment or order in a suit *inter partes*, in which it had been found that the plaintiff had been adopted, could not be used at all as evidence of the fact of adoption in a suit *inter alios*. It only spoke of decrees or judgments *inter alios*, and never intended to speak of the admissibility or inadmissibility of thakbust maps or other similar surveys, as to whether they would or would not be evidence against persons who were not parties to them. MOTHE LALL v. BHOOP SINGH

[2 Ind. Jur., N. S., 245: 8 W. R., 64

JUDICIAL ACT.

See CASES UNDER JUDICIAL OFFICERS,
LIABILITY OF—

JUDICIAL COMMISSIONER, POWER OF—

——— False evidence.—*Criminal Procedure Code (Act XXV of 1861), s. 172.*—A Judicial Commissioner has no power, under section 172 of the Code of Criminal Procedure, to commit a witness for a false deposition given before the Assistant Commissioner. QUEEN v. MATI KHOWA

[3 B. L. R., A. Cr., 36: 12 W. R., Cr., 31

JUDICIAL COMMISSIONER, ASSAM, JURISDICTION OF—

——— Act XL of 1858.—*Succession Act, X of 1865, s. 235.*—Assam does not come within the definition of a province, but of a district, for the purposes of Act X of 1865; and the jurisdiction, in granting probates and letters of administration under section 235 of that Act, is vested, not in the Deputy Commissioner, but in the Judicial Commissioner. The Court of the Judicial Commissioner, not of the Deputy Commissioner, is the principal Court of original civil jurisdiction in Assam, and the Judicial Commissioner is the officer to whom, under Act XL of 1858, the charge of minors and their property is committed. KRISTO SURMA ADHIKARIE v. BASOODEB GOSSAMEE

[12 W. R., 424

JUDICIAL COMMISSIONER, PUNJAB, CIRCULAR ORDERS PASSED BY—

See INDIAN COUNCILS ACT.

[12 B. L. R., P. C., 167

JUDICIAL NOTICE.

See CIVIL PROCEDURE CODE, 1882, s. 87.

[4 B. L. R., O. C., 51

See RELIGION, OFFENCES RELATING TO—

[1 L. R., 7 All., 461

——— Justice of the Peace.—*Case sent up to High Court.*—Where *E.* had tried a case and sent it up to the High Court, but it did not appear whether he had done so in his capacity of a Magistrate or of a Justice of the Peace.—*Semble*, the High Court was bound to take judicial notice that *E.* was a Justice of the Peace for Bengal. QUEEN v. NABADWIP GOSWAMI

[1 B. L. R., O. Cr., 15: 15 W. R., Cr., 71, note

JUDICIAL OFFICER, CHARGE BY, FOR EXECUTING COMMISSION.

See COMMISSION—CIVIL CASES.

[12 B. L. R., Ap., 4

JUDICIAL OFFICER, TRANSFER OF—

See MAGISTRATE, JURISDICTION OF—

TRANSFER OF MAGISTRATE DURING

TRIAL . . . 1 L. R., 2 Calc., 117

[1 L. R., 3 All., 563

JUDICIAL OFFICERS, LIABILITY OF—

1. ——— Protection while exercising judicial functions.—*Stat. 21 Geo. III, c. 70, s. 24.*—*Trespass, Action of.*—The 21st George III, Cap. 70, section 24, protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same footing as those of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting *bond fide* in cases in which they have mistakenly acted without jurisdiction. Trespass will not lie against a Judge for acting judicially but without jurisdiction, unless he knew, or had the means of knowing, of the defect of jurisdiction, and it lies upon the plaintiff, in every such case, to prove that fact. CALDER v. HALEET . . . 2 Moore's I. A., 293

2. ——— Act XVIII of 1850.—*Person acting within limits of his jurisdiction.*—*Bona fides.*—Under the provisions of section 1 of Act XVIII of 1850, no person acting judicially is liable for an act done or ordered to be done by him in the discharge of his judicial duty within the limits of his jurisdiction. In such a case the question whether he acted in good faith does not arise. MEHRAJ v. ZAKIR HUSAIN

[1 L. R., 1 All., 280

3. ——— Acts done in good faith.—*Pleading.*—Act XVIII of 1850 does not protect judicial officers from being sued in a Civil Court except in respect of acts done by them in good faith in the discharge of their judicial functions. When a

JUDICIAL OFFICERS, LIABILITY OF. —Act XVIII of 1850—continued.

plaint is presented to a Judge against such an officer, which complains of a wrongful act on the part of that officer, the Judge is bound to receive the plaint, and to leave it to the defendant to plead Act XVIII of 1850. *VENKAT SHERINIVAS v. ARMSTRONG*

[3 Bom., A. C., 47

4. ————— *Criminal Procedure Code, 1861, ss. 68, 212.—Liability of Magistrate.—Held that neither Act XVIII of 1850, nor sections 68 and 212 of the Code of Criminal Procedure, 1861, protected a Magistrate who had failed to act reasonably, carefully, and circumspectly in the discharge of his duties. VINAYAK DIVAKAR v. BAI ITCHA*

3 Bom., A. C., 86

5. ————— *Liability of public servant for injury done by his act, illegal though bond fide.—Protection of judicial officers.—Cantonments Act (XXII of 1864), s. 11.—Lunatic Asylums Act (XXXVI of 1858), s. 4.—Act XVIII of 1850 is for the protection of judicial officers acting judicially, and of officers acting under their orders. An officer commanding in cantonments, acting bond fide in the discharge of his public duty, and under the belief that a person was dangerous by reason of insanity, caused him to be arrested, in order that he might be examined by medical officers, and caused him to be detained in his house for that purpose, he not being a dangerous lunatic. The medical officers, while reporting him sane, recommended that he should be placed under the observation of the civil surgeon of the station, for which purpose the same officer caused his further detention. The commanding officer, who, under Act XXII of 1864, section 11, had control and direction of the police in the cantonment, did not proceed, or intend to proceed, under section 4 of Act XXXVI of 1858. Held that, although his belief might have justified the commanding officer, if he had proceeded under the provisions last mentioned, yet he not having done so, and not having any legal authority for what he had done, was not protected from liability in respect of the above acts. SINGLAIR v. BROUGHTON*

[I. L. R., 9 Calo., 341; 13 C. L. R., 185
L. R., 9 I. A., 152

6. ————— *Liability of Municipal Commissioner sitting as Magistrate under Beng. Act III of 1864.—A Municipal Commissioner invested with the powers of a Magistrate under Bengal Act III of 1864, is protected by Act XVIII of 1850 in respect of every act done by him in such capacity judicially; and so long as he acts within his jurisdiction, and in good faith, no action for damages will lie against him in a Small Cause Court. HALIMOOZZU-MAH v. MUNICIPAL COMMISSIONERS OF HOOGHLY*

[13 W. R., 340

7. ————— *Collector of Sea Customs at Madras.—Imposition of fine without jurisdiction.—Bond fide belief.—The defendant, who was Collector of Sea Customs at Madras, professing to act under the 24th section of Act VI of 1863, imposed a fine on the plaintiff, over whom he had no jurisdic-*

JUDICIAL OFFICERS, LIABILITY OF. —Act XVIII of 1850—continued.

tion, and seized the property of the plaintiff, with a view to realising such fine. Held, on a consideration of all the circumstances of the case, that the belief of the defendant that he had jurisdiction was not bond fide, and that, accordingly, he was not protected by Act XVIII of 1850. *COLLECTOR OF SEA CUSTOMS v. PUNNIAR CHITHAMBARAM. I. L. R., 1 Mad., 89*

8. ————— *Liability of Magistrate.—Conviction of servant for misbehaviour.—Bom. Reg. I of 1814.—Act II of 1839.—Held that an action of trespass for false imprisonment lay against a Magistrate who proceeded without jurisdiction to convict a tailor, charged before him under Bombay Rule, Ordinance, and Regulation I of 1814, for misbehaviour as a domestic servant, there being no information or evidence on oath of the offence charged as required by the Regulation, as well as by Act II of 1839, and the plaintiff not being a domestic servant, or any servant within the scope of the Regulation; and when called upon to plead, having stated that he left the service because there were wages due to him from his employer, upon which statement he was convicted, without any proper investigation into the truth of it. Held, also, that the Magistrate, who failed to act reasonably, carefully, and circumspectly, cannot be said to have in good faith believed himself to have jurisdiction, within the meaning of Act XVIII of 1850, and consequently that he cannot claim the protection of that Act in an action brought against him in a Civil Court. VITHOBA MALEHARI v. CORFIELD*

3 Bom., Ap., 1

9. ————— *Order made by Political Agent in his executive capacity.—In a suit brought in the High Court, Bombay, by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him which affected their caste, the plaintiff stated that the defendant, at the time the orders were made, exercised exclusive civil jurisdiction throughout the territories of the Chief of Modhool, and that the Court of the defendant was a Court subject to the superintendence of the High Court at Bombay; and that the orders complained of were made by him as Political Agent and in his executive capacity. Held that there was no cause of action whether the acts were done by the defendant as Political Agent or in his judicial and magisterial capacity. INHABITANTS OF MAHALINGPORE v. ANDERSON*

7 B. L. R., 452, note

10. ————— *Refusing bail, Liability of Magistrate to action for.—The refusing or accepting of bail is a judicial, not merely a ministerial, duty, and a mistake in the performance of that duty by a Magistrate without malice will not be sufficient to sustain an action. PARANKUSAM NARASIA PANTULU v. STUART*

2 Mad., 896

11. ————— *Liability of Magistrate.—Delay in trying prisoners.—Power to adjourn case.—A Deputy Magistrate, who without reason causes delay in proceeding with the trial of persons whom he keeps in jail, is liable, notwith-*

JUDICIAL OFFICERS, LIABILITY OF. —Act XVIII of 1850—continued.

standing Act XVIII of 1850, to an action for damages if the prisoners are eventually acquitted. By section 22 of the Code of Criminal Procedure, a Magistrate may, by a written order, from time to time adjourn an enquiry for a period not exceeding fifteen days. **QUEEN v. SHAHON**

[11 W. R., Cr., 19

12. ————— Illegal arrest when acting *bond fide*.—Liability of public officer.—Where the defendant, a commanding officer of a regiment, had unlawfully caused the plaintiff, a contractor, to be arrested and kept in confinement on the reasonable suspicion of fraud entertained against him, believing himself to be lawfully possessed of the authority to do so, and did not act in malice or conscious violation of the law, nor for the furtherance of any unlawful purpose, but failed to establish the fraud imputed,—*Held* that the plaintiff under the circumstances was entitled to substantial damages. **PATTON v. HURRE RAM** . . . 3 Agra, 409

13. ————— Improper procedure of Magistrate.—The Magistrate of a district issued an order under section 308 of the Criminal Procedure Code, 1861, calling on the petitioner to remove a building, on the ground that it was an unlawful obstruction in a highway. A jury of five persons, though without any instructions and differing in their views as to the proper performance of their duties, found, after the time for their report had expired, that the building was not on the high road at all. Five days after the Magistrate issued another order requiring the petitioner to pull down the house within 15 days as the report of the jurors had not been made within the time prescribed. The petitioner showed cause under section 313, but without effect, and the order was repeated. The Sessions Judge meanwhile, upon application of the petitioner, called for the proceedings under section 434; but the Magistrate wrote questioning the Judge's authority to interfere; and without waiting for the reply proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant, and sentenced him to 25 days' imprisonment, under section 188 of the Penal Code. His house was also pulled down. The proceedings were ultimately forwarded to the Sessions Judge, whose successor in office returned them with the remark that nothing appeared to have been done contrary to the law for the removal of local nuisances. *Quare*,—Whether Act XVIII of 1850 would protect a Magistrate in such a case from being sued for damages. **R.E.G. v. DALSUKRAM HARIBHAI**

[2 Bom., 407; 2nd Ed., 384

14. ————— Liability of Magistrate.—*Illegal order under s. 308 of Criminal Procedure Code, 1861.*—A Magistrate who makes an illegal order, which purports to be made under section 308 of Act XXV of 1861, but is not made in accordance with the provisions of that section, is liable to be sued in the Civil Court in respect of such order, and to be restrained by injunction from carrying it into effect. **ASHBURNER v. KESHAV VALAD TUKU PATIL** . . . 4 Bom., A. C., 150

II

JUDICIAL OFFICERS, LIABILITY OF. —Act XVIII of 1850—continued.

15. ————— Liability of Magistrate.—*Officer acting without jurisdiction.*—Suit to recover damages from defendant, Deputy Magistrate of the Zillah of Trichinopoly, for a trespass alleged to have been committed in execution of an order made by him under section 311 of the Criminal Procedure Code, directing the demolition of the plaintiff's house, as being a nuisance to a public thoroughfare. Defendant denied his liability, alleging in justification of his order that he believed the house to be obstructive to public comfort, and proceeded in accordance with sections 308, 310, and 311 of the Criminal Procedure Code, 1861, and that having acted in good faith in discharge of his duties as a Magistrate he was protected by Act XVIII of 1850. The issues settled were (1) whether the house was an obstruction and nuisance within section 308 of the Criminal Procedure Code; (2) whether the defendant acted in good faith in the discharge of his public duty in ordering the removal of the house; (3) whether the plaintiff was entitled to the amount of damages claimed. The Civil Judge held upon the first issue that the defendant had no jurisdiction to order the removal of the house; upon the second issue that defendant had not acted with due care and attention, but from feelings of personal animosity towards plaintiff, and was therefore not protected by Act XVIII of 1850; upon the third issue he assessed the damages at Rs500. The defendant appealed, relying mainly upon the objection that no action lay against him, inasmuch as, first, it had not been shown that he acted without jurisdiction in making the order complained of; and, secondly, that even if he had acted without jurisdiction, he acted believing at the time with good faith that he had jurisdiction, and was therefore entitled to the protection given by Act XVIII of 1850. *Held*, upon the first point, that an entire absence of jurisdiction to make the order had been shown; upon the second point, that the facts of the case furnished no reasonable or probable ground for belief in the existence of jurisdiction by a Magistrate of ordinary qualifications; that the defendant must therefore be held not to have entertained that belief in good faith, unless the provisions of the Criminal Procedure Code, under which he acted, admit of the view that he might, not unreasonably, think that it was probably intended to apply to such an annoyance as that complained of; that, however, these provisions were open to such a misunderstanding and misapplication by a Magistrate of ordinary qualifications, and consequently that the suit should be dismissed. **RAGUNADA RAU v. NATHUMANI THATHAMAYANGAR** . 6 Mad., 423

16. ————— Liability of Magistrate to damages for illegal order made under s. 308, Criminal Procedure Code, 1861.—The first defendant, acting as a Magistrate, ordered the removal of the plaintiff's house under section 308 of the Criminal Procedure Code, upon the ground that it was a nuisance and obstructive to the public thoroughfare. *Held* that the house was neither an obstruction nor a nuisance, and that the first defendant had no jurisdiction to direct its removal, but the first defendant having acted in his judicial capacity, and in good

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JUDICIAL OFFICERS, LIABILITY OF. —Act XVIII of 1850—continued.

faith believed himself at the time to have jurisdiction, a suit for damages could not be maintained against him. *SSSHATYANGAR v. RUGHUNATHA ROW* 5 Mad., 345

17. ———— *Liability of Magistrate.*—Order under Criminal Procedure Code (Act XXV of 1861), ch. XX, ss. 62, 808.—The plaintiff sued a Magistrate for damage occasioned to him by the cutting of his bund at the Magistrate's order. The Magistrate raised the defence that he was protected by Act XVIII of 1850 for all acts done by him *bona fide* in his magisterial capacity. *Held*, on the facts, that the Magistrate was liable. Act XVIII of 1850 does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of, unless he in arriving at that belief acted reasonably, circumspectly, and carefully. A Magistrate would not be personally liable for an act done by him under a misconstruction or misinterpretation of the law, if his proceedings were in other respects regular, and if the misconstruction or misrepresentation were one which might have been put upon the law by a reasonable man, acting with ordinary care and attention. But a Magistrate is not protected by saying he misconstrued the law, unless his proceedings have been in other respects regular, and the view of the law taken by him is such as a reasonable and careful man might take. Neither section 62 nor Chapter XX of the Criminal Procedure Code authorises a Magistrate to dispose of the property of others at his mere will and pleasure, or without his having distinct and legal grounds for the course he takes. When a Magistrate violates the plain language of the law and the very first principles of judicial enquiry, his proceedings presumably are characterised by want of care. *TARAKNATH MOOKHOADHYA v. COLLECTOR OF HOOGHLY* [4 B. L. R., A. C., 37: 13 W. R., 18

In the same case, on review the lower Appellate Court found, as a fact, that the Magistrate proceeded under Chapter XX of the Criminal Procedure Code; that he called on the plaintiff to show cause, and did hold an enquiry through the police. The High Court, in special appeal, accepting the fact as found by the lower Court, held that the Magistrate was acting judicially and with jurisdiction (though under the circumstances disclosed carelessly and irregularly), and was therefore protected from an action for damages. A proceeding under Chapter XX of the Criminal Procedure Code, if regular and such as the law prescribes, is a judicial proceeding; but a Magistrate does not act legally under it if he does not first call on the person with whose property he proposes to interfere to appear and show cause. *COLLECTOR OF HOOGHLY v. TARAKNATH MOOKHOADHYA*

[7 B. L. R., 449: 16 W. R., 63

18. ———— *Judicial act.*—*Right of suit.*—*Liability of Magistrate.*—*Beng. Act VI of 1868, sch. K.*—The removal by a Magis-

JUDICIAL OFFICERS, LIABILITY OF. —Act XVIII of 1850—continued.

trate of an obstruction in the exercise of the powers conferred upon him by schedule K, clause 1 of Bengal Act VI of 1868, is not a judicial act; and the Magistrate is, therefore, not protected by Act XVIII of 1850 from a suit in the Civil Court to try the question of the right of the person against whom the order was made to create the obstruction and for damages. *CHUNDER NARAIN SINGH v. BROJO BULLUB GOOYER* . . . 14 B. L. R., 254: 21 W. R., 391

Affirming decision in *CHUNDER NARAIN SINGH v. BROJO BULLUB GOOYER* . 21 W. R., 126

19. ———— *Abuse of his authority by Judge.*—Wilful abuse of his authority by a Judge—that is, wilfully acting beyond his jurisdiction—is a good cause of action by the party who is injured. *AMMIAPPA MUDALI v. MAHOMED MUSTAFA SAIB* 2 Mad., 443

JUDICIAL PROCEEDING.

See CIVIL PROCEDURE CODE, 1882, s. 2.
[I. L. R., 2 Bom., 553

See CRIMINAL PROCEDURE CODE, 1882, s. 176 (1872, s. 185).
[I. L. R., 3 Calc., 742

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See CASES UNDER REVISION—CRIMINAL CASES.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[I. L. R., 1 All., 101

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See DIVORCE ACT, s. 3, CL. 9.
[I. L. R., 4 Calc., 260

See DIVORCE ACT, s. 35.
[9 B. L. R., Ap., 6
I. L. R., 5 Calc., 357

JUDICIAL SUPERINTENDENT OF RAILWAYS.

——— *Dominions of Nizam of Hyderabad.*—*Power of Court of Judicial Superintendent of Railways to commit to High Court.*—*Charges preferred by Advocate General.*—*Letters Patent, 1865, ch. 24.—European British subjects.*—The provisions of the Code of Criminal Procedure (X of 1882) apply to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions held at Secunderabad. Where, after a magisterial inquiry, a European British subject being a public servant within the meaning of section 197 of the Criminal Procedure Code (X of 1882), was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions, without any previous sanction having been obtained as required by that section,—*Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect; but held also that the provisions of section 532 of the Criminal

JUDICIAL SUPERINTENDENT OF RAILWAYS.—Dominions of Nizam of Hyderabad—continued.

Procedure Code applied, and that the Judge presiding at the Criminal Sessions of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner. *Per* SARGENT, C. J.—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is subordinate to the High Court of Bombay in all criminal matters relating to European British subjects. *Per* BAYLEY, J.—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is not subject to the superintendence of the High Court of Bombay within the meaning of clause 24 of the Letters Patent, 1865, and a prisoner committed by the former Court for trial by the High Court cannot be tried on charges preferred by the Advocate General under that clause. *QUEEN-EMRESS v. MORTON*

[I. L. R., 9 Bom., 288]

"JUJMANI RIGHT."

Construction of decree.—The phrase "Jujmani right" in a decree was construed to mean the right to participate in the offerings made to the idol and not the offerings or presents which were made to the priest himself. *JADUB CHUNDER CHUCKERBUTTY v. BHUBO SOONDUREE DASER*

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————— Transfer or re-arrangement of, in
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1. QUESTION OF JURISDICTION.**(a) GENERALLY.**

1. ——— Duty of Court to show its
jurisdiction on its proceedings.—The High
Court pointed out the necessity of a Court showing
its jurisdiction and competency on the face of all its
proceedings. *QUEEN v. BIPEO DOSS*
[8 W. R., Cr., 45]

2. ——— Jurisdiction on what depend-
ent.—*Nature of claim.*—*Nature of defence.*—The
jurisdiction of a Court of Justice as to a cause of
action depends on the nature of the claim put for-

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(a) GENERALLY—continued.**

Jurisdiction on what dependent—*con-
tinued.*

ward by the plaintiff and the matter involved in it,
not on what the defendant may assert by way of
defence. *CHUNDER KOOMAR MUNDUL v. BAKUR
ALI KHAN* 9 W. R., 566

DALGLEISH v. JEEBUN MAHTO . 25 W. R., 130

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3. ——— Objection to jurisdiction.—
Evidence of jurisdiction.—*Military Court of
Requests Act (XI of 1841), s. 8.*—Where the plaintiff
alleges the defendant to be amenable to the jurisdic-
tion of the Court, and the defendant denies its jurisdic-
tion,—*Held* that the parties should be allowed to
go into evidence to support their allegations, and the
Court ought not to have rejected the plaint, without
recording its reasons for the same, or taking evidence
on the point, under section 8, Act XI of 1841.
ANOO CHUND v. SHUMBRHO MULL . 1 Agra, 222

4. ——— *Appeal on merits
of case.*—In a suit for confirmation of possession of
an estate under a bill of sale, by setting aside a bond
in favour of a third party, and a sale in execution of
a decree of the Small Cause Court upon the bond,
the first Court found that plaintiff's bill of sale was
fraudulent, and that he was not in possession. On
appeal the Judge, on an objection taken for the first
time in his Court, held that the Small Cause Court
had no jurisdiction to try a suit on a bond in which
land was hypothecated, and, without going into
plaintiff's case, gave him a decree. *Held* that the
Judge ought to have tried first, not the defendant's
case, but the plaintiff's, who was bound to prove his
possession and the genuineness of his bill of sale;
until then the question of jurisdiction did not arise.
RASH BEHAREN ROY v. ERUD BUKSH
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5. ——— Admission or rejection of
jurisdiction by Court.—*Judicial investigation.*
—A judicial investigation of allegations and facts
sufficient to guide the Court should precede the
admission or rejection of jurisdiction. *NUSRUH
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6. ——— Jurisdiction in supplement-
al suit.—Courts having jurisdiction over the sub-
ject-matter of a suit in which a right is asserted,
have also jurisdiction over a supplemental suit in
which the plaintiff seeks to follow out that right.
*KASHEE NATH KOOKER v. DEB KRISTO RAMANOOJ
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JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(a) GENERALLY—continued.**

7. ——— Distinction between suits, appeals, and applications in matters of jurisdiction.—The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction. **BALAJI RANCHODDAS v. MOHANTAL DALSUKHRAM**. **1 L. R., 5 Bom., 680**

8. ——— Plea of jurisdiction.—Power of Appellate Court.—An Appellate Court cannot treat a plea to jurisdiction as a technical plea which may be disregarded if the Court is satisfied with the decision on the merits. **KESHAVA SANA BHAGA v. LAKSHMINARAYANA**. **1 L. R., 6 Mad., 192**

JOY KISHEN MOOKERJEE v. HURSEHUR MOOKERJEE. **6 W. R., 289**

9. ——— Power of Court to decide want of jurisdiction in another Court.—Although one Court cannot set aside the proceedings of another Court for want of jurisdiction, yet when a matter arises before a Court in the ordinary course of its jurisdiction, and one of the parties relies on or seeks to protect himself by the proceedings of another Court, then in that way the jurisdiction of the Court whose proceedings are pleaded may be enquired into. Accordingly, in a suit in which the plaintiff asked for a declaration of title, and a Revenue Court's want of jurisdiction appeared on the face of its decree, a Munsif was held to be justified in holding that the Revenue Court had no jurisdiction. **GUNNESH PATRO v. RAM NIDHEE KOONDOD**. **22 W. R., 361**

10. ——— Right to object to jurisdiction.—Where a suit is instituted against a Collector and another person, and the Collector does not appeal,—*Held* that the question of the District Court's jurisdiction to entertain the suit being a ground common to all the parties affected by the judgment, it is open to the other person to object that the plaint did not disclose a cause of action against the Collector and that the District Court consequently had not jurisdiction. **SANGAPA MALAPA v. BHIMANGOWDA MARIAPA**. **10 Bom., 194**

(b) WHEN IT MAY BE RAISED.

11. ——— Objection not taken in first Court.—The Court will receive and adjudicate a point of jurisdiction, though not taken below, because as acts done without jurisdiction are acts of no legal effect at all, they must be set aside. **GOOROO PRASAD ROY v. JUGGOBUNDO MOZOOMDAR**. **[W. R., F. B., 15]**

JUGGOBUNDO MOZOOMDAR v. GOOROO PRASAD ROY. **Marsh., 54; 1 Hay, 228**

12. ——— Objection not taken in first Court.—The plea of want of jurisdiction can be entertained for the first time at any stage of a suit, provided there is on the record sufficient material to substantiate it. **NIDHI LAL v. MAZHAR HUSAIN**. **1 L. R., 7 All., 230**

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(b) WHEN IT MAY BE RAISED—continued.****Plea of jurisdiction—continued.**

13. ——— Time for taking objection.—It is an objection which can be taken at any stage of the case. **NOBREN KISHEN MOOKERJEE v. SHIB PERSHAD PATTACK**. **7 W. R., 490**

SUSHTREBUR MOOKERJEE v. MACKENZIE. **[2 W. R., Act X, 76]**

ANUNDEE KOONWAR v. TAKOOR PANDHY. **[4 W. R., Mls., 21]**

14. ——— Objection taken for first time in appeal.—The question of jurisdiction cannot be raised in appeal for the first time, unless it appear upon the face of the pleadings or the admission of the parties, or upon the evidence, that the suit will not lie. Where it did not appear on the face of the pleadings, or on the evidence, under what kind of *bastu* the land in dispute fell, and no plea to the jurisdiction of the Court under Act X of 1859 had been taken in the Courts below, the High Court would not remand the case to enquire under which class of *bastu* land the subject-matter of suit fell, or entertain the point of jurisdiction in appeal. **NAIMUDDA JOWARDAR v. MONCHIEFF**. **3 B. L., B. A. C., 283**

S. C. NYMOODDE JOARDAR v. MONCHIEFF. **[12 W. R., 140]**

15. ——— Objection taken on appeal after remand.—The Court will take notice of a question affecting its jurisdiction even when urged for the first time on appeal after remand. **CHOWDEY WAHID ALI v. MULICK INAYET ALI**. **[6 B. L. R., 52; 14 W. R., 288]**

16. ——— Objection taken on appeal after remand.—When the High Court has remanded a suit for re-trial on the merits, the lower Appellate Court has no authority to raise a question of jurisdiction for the first time. **TEMULJI RUTAMJI v. FARDUNJI KAVASJI**. **5 Bom., A. C., 137**

17. ——— Objection raised for first time on appeal.—Where a suit which ought to have been instituted in the Court of the *Sudder Ameen*, was, that Court being closed for the vacation, referred by order of the District Judge for trial by the Assistant Judge,—*Held*, on objection taken on appeal, that the District Judge ought to have considered the objection, as involving a question of jurisdiction, though raised before him for the first time during the hearing, and not taken in the memorandum of appeal against the decree of the Assistant Judge. **MOTILAL RAMDAS v. JAMNADAS JAYERDAS**. **[2 Bom., 42; 2nd Ed., 40]**

18. ——— Objection raised for first time on appeal.—*A.* sued *B.* in a Court which had no jurisdiction to entertain the claim. The suit was heard and determined in favour of *B.* by the Munsif, whose decree was affirmed on appeal by the District Court. *Held* that *A.* had a right in special appeal to take the objection that the Courts

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(b) WHEN IT MAY BE RAISED—continued.****Plea of jurisdiction—continued.**

below had proceeded without jurisdiction. **BHAI TRIMBAKJI v. TOMU VALAD KUTUR**

[2 Bom., 200 : 2nd Ed., 192

19. ———— Objection raised on special appeal.—Where an objection to the jurisdiction of the Court of first instance was taken for the first time in special appeal, being based on an illegal withdrawal of the suit by the District Judge from the Sudder Ameen to the Assistant Judge's file, it was held that the High Court was not bound to entertain the objection unless it was patent on the face of the record. **BAFUJI AUDITRAM v. UMEDBHAI HATHESING** 8 Bom., A. C., 245

20. ———— Objection raised after remand on special appeal.—A plaint presented to a Court not being the Court of the lowest grade competent to try it, was returned to the plaintiff. It was subsequently registered by the same Court, in obedience to an order of the District Judge, and a decree was passed in plaintiff's favour. On appeal the defendant pleaded want of jurisdiction in the Court below. The plea was overruled, and the case remanded for re-trial on its merits. The Court of first instance again passed a decree in favour of the plaintiff, and the defendant again urged his plea of jurisdiction in appeal, but the Judge declined to go into it a second time. *Held* that the suit not having been instituted in the Court of the lowest grade competent to try it, the District Judge had no power to direct the Court of first instance to hear the case, and although no special appeal was preferred against the decree of the District Judge in which he remanded the case for re-trial, it was still open to the defendant in special appeal to raise the plea of jurisdiction. **GANPUTRAY RANODHYI v. BAI SURAJ** [7 Bom., A. C., 79

21. ———— Objection raised on special appeal.—*Swing without authority.*—A widow, without any written authority, sued on behalf of her son, who was absent on military service beyond the jurisdiction of the Court; the defendant did not object to her want of authority in the Court of first instance, but did so in the Courts of appeal and special appeal. *Held* that the objection was a valid one. **SHIVRAM VITHAL v. BHAGIRATHAI**

[6 Bom., A. C., 20

22. ———— Objection raised on special appeal.—*Presumption of jurisdiction.*—*Held* by **MARKBY, J.**, that whenever an objection is made to the want of jurisdiction for the first time in the High Court on special appeal, every presumption should be made in favour of the jurisdiction of the Courts below. **ROOKE v. PYARI LAL**

[4 B. L. R., Ap., 43 : 11 W. R., 634

23. ———— Objection to jurisdiction taken at late stage of suit.—*Procedure.*—When an objection to the jurisdiction is first taken at a late stage of the suit, instead of being brought

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(b) WHEN IT MAY BE RAISED—continued.****Plea of jurisdiction—continued.**

forward as it should be at the first stage of the suit when the plaint is presented for admission, the proper course is, even if the jurisdiction be doubtful, to proceed to determine the suit. **BAGRAM v. MOSES** [1 Hyde, 284

24. ———— Procedure on allowance of.—Where the objection of jurisdiction had been raised and allowed at an early stage of the case, the plaint should have been returned to be presented in the proper Court. **KHOOSHAL CHUND v. PALMER** [1 Agra, 280

KHANDU MORESHVAR v. SHIVJI GORGOJI [5 Bom., A. C., 212

25. ———— Objection taken on appeal.—*Costs.*—Where the plea of want of jurisdiction was taken in special appeal, each party was made to bear his own costs. **NOBEEN KISHEN MOOKERJEE v. SHIB PERSHAD PATTACK** [7 W. R., 490

26. ———— Application for execution of decree.—*Objection apparent in record.*—*Quere.*—Whether, upon an application for execution of a decree, an objection, apparent on the face of the record, to the jurisdiction of the Court which made the decree, can be entertained. **MOHAN ISHWAR v. HAKU RUPA** I. L. R., 4 Bom., 638

27. ———— Criminal Court.—*Objection taken for first time on appeal.*—A plea of want of jurisdiction may be taken in the High Court, though not taken below. **MACDONALD v. RIDDELL** 16 W. R., Cr., 79

28. ———— Criminal Court.—The case of a prisoner accused of the offence of attempting to cheat by personation was referred, for trial by the District Magistrate to a Magistrate, who, without a complaint being made to him, convicted and sentenced the prisoner. The conviction and sentence were confirmed by the Sessions Judge. On application to the High Court to annul the conviction, on the ground that the Magistrate had no jurisdiction to try the case, the Court refused the application, as the question of jurisdiction had not been raised before the Sessions Court. **REG. v. VISHVANATH DAULATRAY** 4 Bom., Cr., 33

(c) WRONG EXERCISE OF JURISDICTION.

29. ———— Suit instituted in wrong Court.—*Transfer of suit.*—Where a suit has been instituted in the wrong Court, the defect of jurisdiction is not cured by its transfer to the Court in which it ought to have been brought. **PACHAONI AWASTHI v. ILAHI BAKSH** I. L. R., 4 All., 478

30. ———— Case tried without jurisdiction owing to improper valuation.—*Civil Procedure Code, 1859, s. 6.*—*Irregularity not*

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(c) WRONG EXERCISE OF JURISDICTION—continued.**

Case tried without jurisdiction owing to improper valuation—continued.

prejudicing defendant.—Valuation of suit.—Act VIII of 1859, section 6, occurring in a Code of Civil Procedure regulated the practice of Courts, but did not take away jurisdiction from any Court which, like a Subordinate Judge's Court, had general jurisdiction. Accordingly, where an alleged irregularity had in no way prejudiced the appellant, the High Court thought it unnecessary to go into the question of valuation with a view to determine in what Court the suit ought to have been brought. **RUSICK CHUNDER v. RAM LALL SHAHA** . . . **22 W. R., 301**

31. ——— Subject-matter.

—Act XIV of 1869, s. 25.—What *prima facie* determines the jurisdiction of a Court is the claim, or subject-matter of the claim, as estimated by the plaintiff, and the determination having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit. And this is so notwithstanding a *bond fide* error in the estimate made by the plaintiff. But the plaintiff cannot oust the Court of its jurisdiction by making unwarrantable additions to the claim which cannot be sustained and which there is no reasonable ground for expecting to sustain. **LAKSHMAN BHATKAR v. BABAJI BHATKAR** [I. L. R., 8 Bom., 31]

32. ——— Suit brought without jurisdiction.—Suit brought without authority.—Subsequent sanction, Effect of.—Where a suit was brought by a widow on behalf of her son who was absent on military service, and the objection of jurisdiction was taken and allowed, *Held* that the defect of jurisdiction could not be cured by the production of a written authority on special appeal. **SHIVRAM VITHAL v. BHAGIRATHIBAI** . . . **6 Bom., A. C., 20**

33. ——— Suit brought under honest misinformation.—Judge trying suit over which he had no cognisance.—Dekkhan Agriculturists' Relief Act, 1879, ch. 2.—An application of Chapter II of the Dekkhan Agriculturists' Relief Act, XVII of 1879, by a Subordinate Judge, which would have been illegal and wrong if the Subordinate Judge had known the subject-matter of the suit was of greater value than Rs. 100, may be sustained if he was led into applying it by honest misinformation. The original proceedings being thus justified, a Special Judge has jurisdiction to revise them, and, if necessary, to order a new trial. **KONDAJI BAGAJI v. ANAN** [I. L. R., 7 Bom., 448]

34. ——— Suit against Sardar.—Retrospective effect of appointment.—Creation of the defendant as Sardar in 1867 cannot have a retrospective effect so as to affect a suit instituted against her in the Civil Court in 1861 and to render the decree of that Court one without jurisdiction. **RAMABAI SAHEB PATYARDHAN v. APPA** . . . **12 Bom., 13**

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(d) CONSENT OF PARTIES AND WAIVER OF JURISDICTION.**

35. ——— Consent of parties.—Power to give Court jurisdiction by consent.—Where a Court has no jurisdiction, no consent of parties can give it jurisdiction. **AUKHIL CHUNDER SEN ROY v. MOHINI MOHUN DASS**

[I. L. R., 5 Cal., 489; 4 C. L. R., 491]

BHOOPENDRO NATH CHOWDREY v. KALEB PROSUNNO GHOSH . . . **24 W. R., 205**

36. ——— Agreement of parties that suit shall be brought in Court which has no jurisdiction.—Jurisdiction cannot be given or taken away by the agreement of parties. *Held*, therefore, that a clause in a bill of lading vesting jurisdiction in a Court which has no jurisdiction can have no legal effect or be pleaded in bar of a suit brought in a Court which has jurisdiction. **CRAWLEY v. LUCHMEN RAM** . . . **1 Agra, 129**

37. ——— Effect of consent.—Land situated beyond British territories.—The Raja of Dangradra, an independent Chief, sued the Government of Bombay for a village which he described in the plaint as situated in the Raja's own territory. The District Judge, Ahmedabad, rejected the suit for want of jurisdiction, as the village in dispute was beyond the British territories. On appeal, the High Court remanded the case for re-trial on the merits, on the agreement by the plaintiff that he would so amend the plaint as to bring the suit within the jurisdiction of the Ahmedabad District Court. The plaint was accordingly amended and the District Court decided the case on the merits in favour of the plaintiff. The High Court, however, finding that the amendment did not alter the original statement in the plaint regarding the situation of the village, and finding that the plaintiff's evidence and arguments were directed solely to prove that the village was not in British but foreign territory, annulled the decree, although both the parties expressed their willingness that the appeal should be decided on the merits, the Court acting on the rule of law that no consent of parties can give to the Court a jurisdiction which it does not possess over the subject-matter of the suit. **GOVERNMENT OF BOMBAY v. RANMAISINGJI AMARISINGJI**

[9 Bom., 242]

38. ——— Consent to jurisdiction.—Waiver of objection to jurisdiction.—The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff. Two of the defendants did not appear, or make any defence to the suit. The second defendant only appeared, and objected to the jurisdiction of the Court; but his objection was overruled, and a decree was made against all three defendants. On appeal the lower Appellate Court reversed the decree, holding that the Court of first instance had no jurisdiction. The plaintiff preferred a second appeal, and contended that the first and third defendants had consented to the jurisdiction of the Court, and that the decree

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(d) CONSENT OF PARTIES AND WAIVER OF JURISDICTION—continued.****Consent of parties—continued.**

was binding as against them. *Held*, affirming the decision of the lower Appellate Court on the question of jurisdiction, that the conduct of the defendants, even if it could be held to have amounted to consent or acquiescence, did not give the lower Court any jurisdiction. Consent or acquiescence does not give jurisdiction to a Court of limited jurisdiction, though the waiver may be sufficient in a Court of superior jurisdiction. The consent which waives an irregularity, or allows the Court to exercise a power not vested in it, cannot, by itself, give the authority itself as an attribute of the Court, which must directly or indirectly emanate from the Sovereign. **BABAJI v. LAKSHMIBAI . 1 L. R., 9 Bom., 266**

39. ——— Hearing of evidence and decision by different Judges.—Where the Judge who decides the case is not the Judge who heard the witnesses and received the evidence, the defect may be cured by the assent of the parties. **MOHAMED v. OOMDAH KHANUM . 18 W. R., 184**

40. ——— Transfer of case.—*Objection to jurisdiction subsequently taken.*—A suit having been instituted in the Court of the Subordinate Judge who was incompetent to try it, the case was transferred by consent of parties to the Court of the District Judge for convenience of trial. *Held* that such transfer was incompetent, and that such consent did not operate as a waiver of the plea to the jurisdiction which was taken in the defendant's written statement and subsequently insisted on. **LEDGARD v. BULL . 1 L. R., 13 I. A., 134 [1 L. R., 9 All., 191]**

41. ——— Waiver of jurisdiction.—*Consent of parties.*—An objection to jurisdiction cannot be waived by the parties. **LALMOONEY DOSSEN v. JADDOONATH SHAW . 1 Ind. Jur., N. S., 319**
Contra, see **TIOKUM LALL DOSS v. MACARTHUR [1 W. R., 279]**

42. ——— Omission to raise plea of jurisdiction.—In a suit in a Munsif's Court on a right of pre-emption, in which plaintiff undervalued his claim, the defendant, without objecting to the jurisdiction, allowed the case to go to trial, and, after passing through the subordinate Courts, to come up to the High Court in special appeal. It was remanded on a question of fact and came up again in special appeal, when the point was raised for the first time (though not taken in the petition of appeal) that the suit was not cognisable by the Munsif, and therefore that all that had been done had been done without jurisdiction. *Held* that the defendant was not at liberty to waive jurisdiction, and that the objection must be allowed to be taken even at this late stage. *Held* that the suit having been beyond the Munsif's jurisdiction, his judgment was not legal, and his decree, in the eye of the law, no decree at all and of no legal effect. **NAUNHOO SINGH v. TOFAN SINGH . 14 W. R., 226**

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(d) CONSENT OF PARTIES AND WAIVER OF JURISDICTION—continued.****Waiver of jurisdiction—continued.**

43. ——— Omission to raise plea of jurisdiction.—*Held* that, if a defendant who appears in a suit chooses not to raise the plea of want of jurisdiction, he must be taken to submit to the jurisdiction, and that any decree which may be pronounced against him cannot, when it is sought to be executed, be objected to by him, on the ground that the Court which made it had no jurisdiction to try the suit. **EX PARTE MANOHAR BHIVRAY POTANIS . 2 Bom., 396; 2nd. Ed., 374**

KANDOTH MAMMI v. NEELAN CHEERAYIL ABDU KALANDAN . 8 Mad., 14

44. ——— Agreement to submit to execution of decrees.—*Jurisdiction.*—A decree-holder, with a certificate showing that satisfaction of his decree had not been obtained in the district in which it had been passed, applied to the Judge of another district and succeeded in obtaining partial execution. Upon a second attachment issuing, the judgment-debtor prayed for time, and agreed in his petition that if he did not satisfy the debt within the period named the property might be sold. His prayer was granted. He then raised the plea that the Court which made the decree had no jurisdiction to entertain the suit. *Held* that, having pleaded in the Court below on the assumption that the decree was a money-decree which the Court which made it had jurisdiction to make, it was not open to the judgment-debtor's pleader to urge that it was not a money-decree. **RADHA GOBIND GOSWAMI v. OOMA SUNDURE DOSSIA . 24 W. R., 363**

45. ——— Omission to raise objection to execution of decrees.—Certain property having been sold in execution of a decree by a Court to which the decree had been transferred, a suit was brought to set aside the sale on the ground that the Court from which the transfer had been made had no jurisdiction to grant, as it did, a certificate of non-satisfaction. It appeared that on execution being applied for in the Court to which the decree had been transferred, no objection to the jurisdiction had been raised. *Held* that the objection, assuming it to be valid, was taken too late and the sale could not be set aside. **MODUN MOHUN GHOSH HAZRA v. BORODA SONDARI DASIA . 8 C. L. R., 261**

46. ——— Omission to raise plea till late stage of case.—*Right to raise, on special appeal.*—A Munsif having returned a plaint under Act XXIII of 1861, section 8, and dismissed the suit as being in value beyond his jurisdiction, the plaintiff appealed to the District Judge, who, on the 14th June 1872, pronounced the decision wrong, and ordered the Munsif to try the suit. The suit was accordingly tried and dismissed, but on appeal it was decreed by the Subordinate Judge. Subsequently a special appeal was preferred in which objection was raised on the score of jurisdiction. *Held* that the objection could not be taken at this stage, as the

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(d) CONSENT OF PARTIES AND WAIVER OF JURISDICTION—continued.****Waiver of jurisdiction—continued.**

defendant had not chosen to appeal against the District Judge's order of 14th June 1872. **KOYLASH CHUNDER GHOSH v. ASHRAF ALI**. 22 W. R., 101
RAJ NARAIN v. ROWSHAN MULL

[22 W. R., 126]

47. ————— A suit for rent having been brought in the Beerbhoom Collectorate and decreed, the case was referred in execution to the Collector of Burdwan, within whose jurisdiction the property lay. The tenure was sold by the Deputy Collector of the latter district and purchased by the decree-holder. Appeals were made to the Collector and the Commissioner by the judgment-debtor, and were rejected by both officers. The judgment-debtor then brought a suit for possession in the Civil Court, and obtained a decree reversing the sale on the ground that the decree for rent had been made by a Collector who had not jurisdiction. *Held* that, after all that had passed, it was too late to raise the question of jurisdiction. **OOMA SOONDUREN DOSSETT v. BIPIN BEHARAN ROY**. 13 W. R., 292

48. ————— *Civil Procedure Code, 1862, s. 20.*—In 1876, *K.* sued *M.* on a bond, dated 25th December 1869, for Rs. 5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale of the lands, which he purchased on the 17th August 1876 for Rs. 6,000. *K.* then discovered that part of the land hypothecated, situated within the jurisdiction of the Subordinate Court at Kumbakonam, had been acquired by a railway company under the Land Acquisition Act in 1874, and that the compensation, Rs. 460 (claimed by *M.*'s mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of *M.*'s mother. *K.* having applied to the Subordinate Court for an order for payment out of this sum, the Court, by order dated 28th February 1880, directed that the question of title to the money should be decided by suit. *K.* then sued *M.* as the sole heir of his deceased mother in the District Munsif's Court of Tiruvadi (where *M.* resided) for a declaration of right to and to recover the said sum of Rs. 460. On the 16th April 1880 *M.* assigned his interest in the money sued for to *V.*, who was made defendant in the suit on his own application, and pleaded that the Court had no jurisdiction, as both the money and the land which it represented were, and he (*V.*) resided, without the Munsif's Court's jurisdiction. *Held* that the suit was for money, and that *V.* not having applied to stay proceedings under section 20 of the Civil Procedure Code, must be held to have acquiesced in the jurisdiction of the Court. **VENKATA VIRABAGAVA AYYANGAR v. KRISHNASAMI AYYANGAR**

[I. L. R., 6 Mad., 344]

49. ————— *Subsequent plea of, by same party in another case.*—The fact of a defendant not subject to the jurisdiction of a Court

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.****(d) CONSENT OF PARTIES AND WAIVER OF JURISDICTION—continued.****Waiver of jurisdiction—continued.**

having waived his privilege in previous suits brought against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction. **BEER CHUNDER MANIKKYA v. RAJ COOMAR NOBODRE CHUNDER DEB BURMONG**

[I. L. R., 9 Cal., 535; 12 C. L. R., 465]

2. CAUSES OF JURISDICTION.**(a) DWELLING OR RESIDENCE.**

50. ————— *Dwelling-place. Animus revertendi.*—Whatever the purpose for which a man may go to another jurisdiction than that in which his family resides, if there is an *animus revertendi* the family dwelling-house must be considered to be his dwelling-place. **KASHAN NATH KOOR v. DEB KRISTO RAMANOOJ DOSS**. 16 W. R., 240

51. ————— *Civil Procedure Code, 1859, s. 5.—Act XXIII of 1861, s. 4.—Residence.—Soldier with his regiment.*—The fixed and permanent home of a man's wife and family, and to which he has always the intention of returning, will constitute his dwelling-place within the meaning of section 5 of Act VIII of 1859, and section 4 of Act XXIII of 1861. **FATIMA BEGAM v. SAKINA BEGAM**
 [I. L. R., 1 All., 51]

52. ————— *Occasional residence.*—Occasional residence will not bring a defendant within the jurisdiction; he must be a fixed inhabitant of the district in which the suit is brought. **ZALEM TEWARAN v. GOBINDGEER GOSSAIN**

[1 Ind. Jur., O. S., 85]

S. C. LELIM TEWARAN v. GOVINDGEER GOSSAIN

[Marsh., 64; 1 Hay, 132]

53. ————— *Dwelling.—Letters Patent, cl. 12.—Temporary residence.—Habits, calling, and nature of establishment.*—A person having a permanent residence at Dinapore came to Calcutta and resided there temporarily for the purpose of carrying on a suit. *Held* that he could not be said to dwell in Calcutta within the meaning of clause 12 of the Letters Patent. The influence of his habits, calling, and the nature of his establishment, may be considered in deciding whether a defendant is resident within the jurisdiction. **EMRIT LALL v. KIDD**

[Cor., 46; 2 Hyde, 117]

54. ————— *Letters Patent, cl. 12.—Officer on leave.*—The defendant, an officer in the Bombay Staff Corps, holding an appointment in Scinde, came to Bombay on leave, and remained about ten days. During his stay in Bombay, he was served with a writ of summons on a cause of action arising in Scinde. *Held* that the defendant did not "dwell" within the local limits so as to give the Court jurisdiction under clause 12 of the Letters Patent. **KAVASJI FRAMJI v. WALLACE**. 1 Bom., 113

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(a) DWELLING OR RESIDENCE—continued.****Dwelling—continued.****55. ——— Letters Patent, cl.**

12.—Leave of Court.—H. died at Ajmere, his representative then and at the time of suit brought, being resident there. Previous to the death of H., a cause of action had accrued against him in Bombay. *Held* that it was not necessary to obtain the leave of the Court under clause 12 of the Letters Patent before instituting a suit against H.'s representative in respect of such cause of action. **HARGOPAL PREMSUKDAS v. ABDUL KHAN HAJEE MUHAMMAD**

[9 Bom., 429]

56. ——— Civil Procedure

Code, 1859, s. 5.—What constitutes "dwelling" within the meaning of that section.—A testator bequeathed the income of his "altamgha," "zemindari," and "thikadari lands" situate in the districts of Delhi, Hissar, and Bulandshahr, to his five sons in equal shares, and to their issue; directing that one of the sharers should manage the estate, accounting yearly to the others, and receiving ten per cent. per annum. The lands described as "altamgha" were in the Bulandshahr district, within the local limits of the jurisdiction of the Civil Court of Meerut; and on them an establishment was maintained at the expense of the estate. At Hansi, in Hissar, there was also a residence belonging to the estate, and another at Delhi. The will directed that the brothers might, if they liked, live together at Bilaspur, and build houses "with mutual consent in the altamgha and zemindari;" also that certain memorials of the testator were to be retained by the manager at Bilaspur. At this place the manager used to stay occasionally, though travelling for the most part about the estate during the cold weather. No particular place for rendering the yearly accounts was fixed, either by contract or in practice, but they were rendered by the manager to the sharers at different times and in different places, including Delhi, Bilaspur, and Hansi; at which last place, it being the sudder station of Hissar, the older records of the estate were kept. When this suit was brought, the manager was actually residing at the hill station of Mussoorie, in the Saharanpur district, for the hot weather; and in his answer he stated that the unsettled accounts were open to inspection by the sharers at Bilaspur. *Held* that a person might "dwell," within the meaning of Act VIII of 1859, section 5, at more places than one; and that, on the evidence, this manager so dwelt at Bilaspur as to make him subject to the jurisdiction of the Meerut Court in this suit. It was, accordingly, not necessary to consider whether he was or was not also subject to that Court's jurisdiction by reason of the cause of action having arisen within its local limits; nor was it necessary to consider whether he had, or had not, such a dwelling-place at Hansi as would have rendered him subject to the jurisdiction of the Hissar (Punjab) Courts. **ORDE v. SKINNER**

[I. L. R., 3 All., 91
L. R., 7 I. A., 196]**JURISDICTION—continued.****2. CAUSES OF JURISDICTION—continued.****(a) DWELLING OR RESIDENCE—continued.****Dwelling—continued.****57. ——— Residence alternately in Calcutta**

and mofussil.—A party spending his time alternately in the mofussil and Calcutta, and resident in the latter for some days previous to, and on the day of, filing his plaint, is subject to the jurisdiction of the High Court in its ordinary original civil jurisdiction. **NISHADINNY DORSEE v. CALLY KRISTO GHOSH**

[Cor., 24]

58. ——— Temporary residence

for pleasure.—Person without residence elsewhere.—That a temporary residence in Calcutta, for purposes of pleasure, with intention of remaining there a month, without having at the time a residence out of the jurisdiction, is a sufficient dwelling within the jurisdiction to satisfy clause 12 of the Charter. **MORRIS v. BAUMGARTEN**

[Bourke, O. C., 127: Cor., 152]

MATHEW v. TULLOCH . . . 4 N. W., 25**59. ——— Residence out of jurisdiction.**

Bringing suit for damages by collision.—One who sues for damages caused by a collision at sea and out of the jurisdiction of the High Court subjects himself to a cross suit for damages caused by the same collision though himself residing out of the jurisdiction of the Court. **BOMBAY COAST AND RIVER STEAM NAVIGATION COMPANY v. HELSUX**

[4 Bom., O. C., 149]

(b) CARRYING ON BUSINESS OR WORKING FOR GAIN.**60. ——— Carrying on business.**

Suit against Government.—Residence or place of business of Government.—In a suit for specific performance of a contract against Government where the land was situated out of the limits of the ordinary original jurisdiction of the Court, *Held* that the land being so situate the Court could not be said to have jurisdiction by reason of the Secretary of State as the representative of the Government "dwelling" or carrying on business or "personally working for gain" within the local limits of the Court, in the meaning of clause 12 of the Letters Patent. The words "personally working for gain" were intended to give the Court jurisdiction over individuals only. Though Government is in one sense, through its officers, ubiquitous, section 65 of 21 & 22 Victoria, Chap. 106, means not that the Secretary of State may sue or be sued in any Court irrespective of all question of jurisdiction, but that he may sue or be sued in such Court or Courts as may have jurisdiction in respect of each particular cause of action. **RUNDLE v. SECRETARY OF STATE** . . . 1 Hyde, 37

61. ——— Suit against

Government.—Civil Procedure Code, 1859, s. 5.—Letters Patent, cl. 12.—*Semble*,—The jurisdiction to entertain suits against the Government under section 5 of Act VIII of 1859 exists only where the cause of action arose. Under clause 12 of the Letters Patent

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(b) CARRYING ON BUSINESS OR WORKING FOR GAIN—continued.****Carrying on business—continued.**

(1862) constituting the High Court of Madras, the Government must be considered as carrying on business at the place where its members exercise all the functions of Government. The words "carry on business," in that clause, imply a personal and regular attendance to business within the local limits. A suit will not lie in the High Court against the Collector of Madras residing and carrying on business at Sydapet, in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras.

SUBBARAYA MUDALI v. GOVERNMENT

[1 Mad., 286

62. ————— *Civil Procedure Code, 1877, s. 17.—Residing.—Oms probandi.*—Where the cause of action arises in the jurisdiction of a Court other than that in which the suit is brought, the plaintiff must, under the provisions of section 17 of Act X of 1877, show that the defendant at the time of the commencement of the suit actually and voluntarily resided or carried on business, or personally worked for gain, within the jurisdiction of the Court in which the suit was brought.

MODHU SUDAN CHOWDERY v. COOHRANE

[6 C. L. R., 417

63. ————— *Letters Patent, cl. 12.—Temporary stay and office in Calcutta.*—A., who had no regular office, but came once or twice a week from the mofussil to a friend's house in Calcutta, and saw people there on business, contracted with B. in Calcutta for the hire of certain cargo-boats. While being towed by a steamer, which A. had chartered according to agreement, the boats, when beyond the jurisdiction of the Court, sustained great damage by reason of gross negligence on the part of C., whom A. had placed in charge. *Held* (1) that the cause of action did not arise in Calcutta; (2) that A. "carried on business" in Calcutta within the meaning of section 12 of the Charter. **GREENSH CHUNDER BANNERJEE v. COLLINS . 2 Hyde, 79**

64. ————— *Letters Patent, cl. 12.—Temporary residence.*—M., residing at Meerut, sued B. in respect of a cause of action which did not arise in Calcutta. It appeared that B. usually resided at Mussoorie from March to October, but attended races at Meerut, Calcutta, and elsewhere, at which races he ran horses, but not for gain. B. had no pursuit or occupation, other than that afforded by his horses. He had come to Calcutta to attend a race meeting, and had been living in Calcutta for some days previous to and on the day the plaint was filed. The Court decided that he was amenable to its jurisdiction. *Held* that such racing transactions do not constitute a "carrying on business" or "personally working for gain" within the meaning

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(b) CARRYING ON BUSINESS OR WORKING FOR GAIN—continued.****Carrying on business—continued.**

of section 12 of the High Court Charter. **MORRIS v. BAUMGARTEN . Bourke, O. C., 127 : Cor., 152**
MAYHEW v. TULLOCH . . . 4 N. W., 25

65. ————— *Letters Patent, cl. 12.*—A trader in the mofussil habitually sent grain to Madras for sale by a general agent for the sale of goods sent to him by different persons. On some occasions the trader himself accompanied the loaded bandies. Since his death the first defendant, his widow, carried on his business. The grain so sent for sale was never stored, but remained in the bandies until sold by the agent, who acted himself as broker, the purchasers paying his brokerage commission, and the consignors of the grain paying nothing. *Held* that the first defendant did not "carry on business" within the jurisdiction of the High Court of Madras within the meaning of section 12 of the Letters Patent. **CHINNAMAL v. TULUKANNATAM-MAL . . . 3 Mad., 146**

66. ————— *Letters Patent, cl. 12.*—The defendants resided and carried on business in London, and employed C. F. & Co. as their commission agent in Bombay. The plaintiffs at Bombay executed a power of attorney in favour of the defendants to enable them to sue in England for certain money due to the plaintiffs, and handed the power of attorney to C. F. & Co., who undertook to forward it to the defendants in London, and that the defendants should endeavour to recover the money so due to the plaintiffs. The defendants recovered the money in England for the plaintiffs, but did not transmit it to the plaintiffs in Bombay. In a suit brought by the plaintiffs to recover the money so received by the defendants, it was held that the cause of action had not arisen wholly in Bombay, and that the High Court, under clause 12 of its Letters Patent, had no jurisdiction to entertain the claim, the leave of the Court to file the suit not having been obtained. Where an English firm, upon the usual terms, employs a Bombay firm to act as the English firm's commission agents in Bombay, such English firm does not thereby render itself liable to be sued in the High Court of Bombay, as it does not carry on business within the local jurisdiction of such High Court within the meaning of the above clause of the Letters Patent. **KHIMJI CHATURBHUI v. FORBES . 8 Bom., O. C., 102**

67. ————— *Letters Patent, 1865, cl. 12.—Suit on handi.*—The defendant, who resided and carried on business at Patna, was in the habit, several times in the course of the year, of sending goods to Calcutta by boat and coming down himself by rail; he received his goods, and remained in Calcutta until he sold them. He had no place of business, nor any gomastah or agent of his own in Calcutta, but used to sell the goods himself, and put up sometimes at one *hāt*, sometimes at another. His stay in Calcutta varied from two to four months,

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(b) CARRYING ON BUSINESS OR WORKING FOR GAIN—continued.****Carrying on business—continued.**

He used to pay commission on the goods sold to the Arit where he put up, and he was in the habit of drawing hundis at Patna on himself at Calcutta, accepting and paying them in Calcutta. The plaintiff brought a suit on a hundi so drawn, and purporting to be so accepted by the defendant, of which payment was refused by the defendant. The defendant admitted the drawing of the note, but alleged that the acceptance was forged. The Judge found that the note had not been accepted by the defendant. The summons was served on the defendant in Calcutta. Leave to institute the suit had not been obtained under clause 12 of the Letters Patent. *Held*, the whole cause of action did not arise in Calcutta. *Held*, also, that the defendant was not, at the commencement of the suit, carrying on business in Calcutta within clause 12 of the Letters Patent. Leave to institute the suit under clause 12 not having been obtained, the Court had no jurisdiction to entertain the suit. **HARJIBAN DAS v. BHAGWAN DAS**
[7 B. L. R., 102; 16 W. R., O. C., 16]

Held, on appeal, reversing the decision of the Court below, that the defendant was "carrying on business" in Calcutta within clause 12 of the Letters Patent. **HARJIBAN DAS v. BHAGWAN DAS**
[7 B. L. R., 585; 16 W. R., O. C., 16]

68. ——— Letters Patent, cl. 12.—A defendant does not "carry on business" so as to come within clause 12 of the Letters Patent of the High Court of Bombay and render himself subject to the ordinary original civil jurisdiction of that Court, though he may have an agent at Bombay for certain purposes connected with his business, where that which is the essential ingredient in his business does not take place within the local limits of the jurisdiction of the Court. A retail dealer in European goods residing and carrying on business at an up-country station is not within the jurisdiction of the High Court on the ground that he has an agent in Bombay for the purpose of purchasing and forwarding goods to be used in his trade. **FRAMJI KAVASJI v. HOEMASJI KAVASJI**
1 Bom., 220

69. ——— Letters Patent, cl. 12.—*Carrying on business by agent.*—Section 12 of the Letters Patent of the Madras High Court does not, in order to give jurisdiction, require a defendant personally to carry on business within the local limits of Madras. **MUTHAYA CHETTI v. ALLAN**
[I. L. R., 4 Mad., 209]

70. ——— Personally working for gain.—*Suit to recover value of timber.*—A suit to recover the value of timber alleged to have been forcibly carried off by the defendants from a ghât in the district of Tirhoot, having been brought in the Court of the Subordinate Judge of the 24-Pergunnahs, that Court was held to have jurisdiction in the case, on its being shown that one of the defendants, at the commencement of the suit, personally worked

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(b) CARRYING ON BUSINESS OR WORKING FOR GAIN—continued.****Personally working for gain—continued.**

for gain within the limits of the 24-Pergunnahs. **MOTES DOSSEE v. DEETA HURUKMUN SINGH**
[11 W. R., 64]

71. ——— Cause of action.—*Civil Procedure Code, 1859, s. 5.—Jurisdiction.*—*Suit for breach of contract.*—When a person residing at Benares made an agreement at Allahabad with a barrister to conduct his case for him, which was then pending in the Court of the Judge of Benares, and it was alleged that an advance of fees had been paid on the specific condition that such advance was to be returned in the event of the barrister not appearing on behalf of the party engaging him, or of his doing no work for him, or of the case being decided in his absence, and it was further alleged that the barrister did not appear at the hearing of the case, and that it was decided in his absence, and that the advance of fees had not been returned,—*Held*, in a suit for the recovery of the moneys advanced as aforesaid, that the cause of action arose at Benares. If the alleged condition was not complied with, and the fees thereby became returnable to the client, it would have been the duty of the barrister to have sought out his creditor at Benares and to have paid him there, or have remitted the money to him. *Semble*,—That a member of the Bar of the High Court residing out of the station in which the High Court is located, but who holds himself out as ready to practise in the High Court, and who goes to the High Court whenever he is engaged to appear there, is one who "personally works for gain" inside of the limits of the station in which the High Court is located within the meaning of section 5, Act VIII of 1859. **RAI NARAI DAS v. NEWTON**
6 N. W., 43

(c) CAUSE OF ACTION.

72. ——— General cases as to arising of cause of action.—*Civil Procedure Code, 1859, s. 5.—Act XXIII of 1861, s. 3.*—A Civil Court has jurisdiction to determine a suit where the defendants dwell, or the cause of action arises within the jurisdiction. The two qualifications need not exist together. Act XXIII of 1861, section 3, requires the absence of both to justify the dismissal of the suit for want of jurisdiction. **MORRIS v. ATMAKURU LUTCHMANA ROW**
6 Mad., 43

ANONYMOUS CASE
5 Mad., Ap., 4

73. ——— Letters Patent, cl. 12.—*Cause of action partly arising.*—*Leave of Court.*—Under section 12 of the Charter of the High Court, 1865, when the cause of action arises only partly within the local limits, the leave of the Court must be obtained before the institution of the suit. **ABDOOL HAMED v. PROMOTHONATH BOSE**
[1 Ind. Jur., N. S., 218]

74. ——— Suit for sum made up of items as to which cause of action arose

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.**

General cases as to arising of cause of action—continued.

in different places.—“*Whole cause of action.*”—An application was refused for leave to commence a suit in the original side of the High Court, to recover a sum which was made up of various items, with respect to some of which the cause of action arose in Madras, but as to the great bulk of the claim, the cause of action arose elsewhere. Upon appeal the decision was sustained. *Per* BITTLESTON, J.—The High Court, especially when exercising its ordinary original jurisdiction, is bound to adopt the interpretation of the words “cause of action” and “part of the cause of action” laid down with general, if not complete, uniformity under the English County Court Act. The cause of action means the whole cause of action. The whole cause of action includes every fact essential to the maintenance of the action, and each of these facts separately is but a part of the cause of action. The Charter of the High Court refers to a cause of action arising wholly or in part within the local limits. The cause of action spoken of may consist of several parts, which parts may arise in different places. *Per* HOLLOWAY, J.—The High Court is not bound by the definition of cause of action derivable from the English cases. Where there is a manifest discordance between a decision of the Judicial Committee of the Privy Council and the Common Law Courts at Westminster, the decision of the Judicial Committee is entitled to the greater weight. Irrespectively of the domicile of the defendant, there is a competent *forum*, wherever a place can be indicated to which the right and its infraction can both be referred, because there is a cause of action and the whole cause of action. *De Souza v. Coles* **3 Mad., 384**

75. ——— Balance of account, Suit for.—*Cause of action arising on items of account.*—*Civil Procedure Code, 1859, s. 5.—Act XXIII of 1861, s. 4.*—In the Civil Court of Berhampore, plaintiffs sued defendants for money due by one S. deceased. Defendants 1, 2, 3, and 4 were sued as heirs of the deceased; the fifth defendant, as having instigated the other defendants to withhold payment. The first defendant resided at Vizagapatam, second at Bimlipatam, third and fourth at Madras. The fifth defendant resided at Berhampore. From the accounts produced, it appeared that there were, between the plaintiffs (merchants at Berhampore) and deceased (a merchant at Madras), a series of transactions of different kinds, in which they acted, sometimes as principal, and sometimes as agent, the one for the other. *Held* that, although in the account sued upon there were some items which, if they could be separated from the rest, would give a cause of action within the jurisdiction of the Berhampore Court, they could not be so separated, and that the intention was that the dealing should be continuous; that upon that footing the plaintiffs had properly sued for the balance of the whole account, but that they had brought their suit in the wrong Court, because the whole cause of action did not arise within the jurisdiction of that Court,

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.**

Balance of account, Suit for—continued.

and none of the defendants, who were properly joined in the suit, dwelt or worked within that district. *Held*, also, that the wrongful addition of the resident defendant could not bring the case under the operation of section 4, Act XXIII of 1861, and that the cause of action against the fifth defendant was totally distinct from that alleged against the others, and the two could not be joined in one suit. *ATMAKURI BHAYANA SETTI v. SANYASI SETTI*

[**8 Mad., 222**

76. ——— Civil Procedure Code, 1859, s. 5.—*Place of making and performance of contract different.*—B. entered into a verbal agreement with A. at Serampore, where A. resided, to start in Calcutta a certain banianship business in conjunction with A.'s son; A. agreeing to advance the required funds on the condition that the sum advanced should be repaid him within a certain date with interest. No place was fixed for repayment. The money was advanced partly at Serampore and partly in Calcutta. B. afterwards went to reside at Chandernagore. In a suit by A. for recovery of the balance of the sum advanced, brought in the Hooghly Court, the Judge held that he had no jurisdiction, inasmuch as the cause of action arose in Calcutta. *Held* on appeal that, under section 5, Act VIII of 1859, the Hooghly Court had jurisdiction to try the suit. *Per* MARKBY, J.—An action may be brought either in the *forum* of the place where the contract was made, or in that where the performance was to have taken place. *Quare*,—Whether this rule would apply if both parties were, at the time the contract was made, in a district where neither of them had any dwelling or place of business. *Per* BIRCH, J.—When no place for the performance of a contract is prescribed by the agreement, or exacted by the necessities of the case, the place where it is intended by the parties such contract should be fulfilled ought to supply the *forum*. *GOPIKRISHNA GOSSAMI v. NILKOMUL BANERJEE*

[**13 B. L. R., 461: 22 W. R., 79**

77. ——— Agreement to repay balance struck.—Where a balance was struck, and an agreement to repay the balance was drawn out at Cawnpore,—*Held*, the Cawnpore Court had jurisdiction to entertain a suit on that agreement, and its jurisdiction was not affected by the fact of the transaction, in respect of which the agreement was given, having happened elsewhere. *HAIM RAJ v. RAM BUX* **1 Agra, 115**

78. ——— Place of payment not specified.—D. & Co., carrying on business at C., shipped goods to London for sale on account of P. D., and advanced money to P. D. against the shipments. P. D. promised to pay the difference if the amount realised by the sales in London fell short of D. & Co.'s advance, costs, and commission. No place of payment was specified. *Held*, in a suit to recover money due on account of such short falls,

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Balance of account, Suit for—continued.**

that the whole cause of action arose at C., where D. & Co. carried on business, where the promise was made, and where the money must be taken to have been payable. *DARRAGH AND CO. v. PURSHOTAM DEVLJI* **I. L. R., 4 Mad., 373**

79. ——— Residence by agents.—*Joinder of causes of action.*—The right to join in one suit two causes of action against a defendant cannot be exercised, unless the Court to which the plaint is presented has jurisdiction over both causes of action. The defendants, who resided and carried on business at Bombay, acted as the agents of the plaintiff for the sale, purchase, and despatch of goods to Tellicherry, where the plaintiff resided. The plaintiff sued the defendants for money due on account of the transactions in Tellicherry. *Held* that no cause of action arose in Tellicherry. *KHIMJI JIVRAJU SHETTU v. PURSHOTAM JUTANI* **I. L. R., 7 Mad., 171**

80. ——— Venue.—Act X of 1859, s. 24.—*Suit by zemindar against manager of two estates.*—The defendant was appointed a superintendent of two estates, one called Chulman, within the subdivision of Diamond Harbour, and the other Alipore, within the subdivision of Alipore. By his kabuliat he agreed to make good any retrenchments his employer, the zemindar, might make in his accounts. Some retrenchments were made, and to recover the balance which appeared due the zemindar brought this suit. *Held* that, as the defendant had agreed by his kabuliat to make the principal kutcherry his place of business, and as both the plaintiff and defendant agreed that the cause of action arose in the principal kutcherry, and as it was the place to which all the moneys were remitted, and where all the accounts were prepared, and the money first came under the control of the defendant and was by his order disbursed, the cause of action arose in the district within which the principal kutcherry lay. *PRASANNA CHANDRA BOSE v. PRASANNA CHANDRA RAJ* **7 B. L. R., Ap., 35**
[15 W. R., 343]

81. ——— Bond, Suit on.—Immediate cause of suit.—Civil Procedure Code, 1859, s. 5.—Section 5 of Act VIII of 1859 gave jurisdiction to the Court where the cause of action shall have arisen, or, in other words, where the facts which immediately confer the right to sue have occurred. Where the immediate cause of the suit was the non-payment of money due on a bond,—*Held* that the Court of the place where default had been made in payment had the jurisdiction to try the suit, and not the Court within the jurisdiction of which the bond was made. *PREM SHOOK v. BHASKOO* **[3 Agra, 242; S. C., Agra, F. B., Ed. 1874,**

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82. ——— Residence.—A bond was executed at Arrah, and provided that payment should be made to plaintiff in person, and

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Bond, Suit on—continued.**

though it described plaintiff and defendant as inhabitants of Patna, yet the plaintiff having been admittedly a resident at Arrah at the time the bond was executed and for some years previously,—*Held* that the intention of the parties was to make the money payable at Arrah, and that consequently the Judge of Shahabad had jurisdiction. *NIRBAN SINGH v. KUMLA SAHOY* **17 W. R., 345**

83. ——— Breach of contract.—Contract for sale and delivery of goods at fixed price.—Suit for price.—Place of suing.—Act X of 1877 (Civil Procedure Code), s. 17 (a).—C. and L. entered into an agreement at a place in the Sarun district, in which the latter resided and carried on business, whereby C. promised to sell and deliver to L. at a place in the Sarun district certain goods, and L. promised to pay for such goods on delivery, "by approved draft on Calcutta or Cawnpore (where C. carried on business), payable thirty days after the receipt of the goods or by Government currency notes." C. delivered the goods according to his promise, but L. did not pay for the same, and C. therefore sued L. for the price of the goods, suing him at Cawnpore. *Held* that the "cause of action," within the meaning of section 17 of the Civil Procedure Code, was L.'s breach of his promise to pay for the goods; that the parties intended that payment should be made at Cawnpore, and the cause of action therefore arose there; and that therefore the suit had been properly instituted there. *LLEWELLYN v. CHUNNI LAL* **[I. L. R., 4 All., 423]**

84. ——— Civil Procedure Code, 1859, s. 17.—Place of making of contract.—The expression "cause of action," as used in section 17 of the Civil Procedure Code, does not mean *whole* cause of action, but includes *material part* of the cause of action. In a suit for compensation for breach of a contract, the making of the contract is a material part of the cause of action. *Held*, therefore, where a contract was made at C. and broken at A., that the Court at C. had jurisdiction to try the suit for compensation for the breach of such contract. *Llewellyn v. Chunni Lal*, **I. L. R., 4 All., 423**; and *Gopikrishna Gossami v. Nilkomal Banerjee*, **13 B. L. R., 461**, followed. *DeSouza v. Coles*, **3 Mad., 384**; and *Jumoonah Pershad v. Zaidunnissa*, **5 C. L. R., 363**, dissented from. *BISHUNATH v. ILAHI BAKSH* **[I. L. R., 5 All., 277]**

85. ——— Consignment and sale of goods.—Suit on failure to sell where agreed.—When goods were consigned for sale to Cawnpore and the consignors sued for damages because the goods were sold elsewhere, the cause of action arose at Cawnpore on failure to sell them there, and not at the place from which they were consigned. *DROKKE NUNDUN v. OOMRAO SINGH* **2 Agra, 246**

86. ——— Non-delivery of goods.—The defendant at Parola agreed to sell and deliver to the plaintiff certain goods, for which the

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Breach of contract—continued.**

plaintiff then paid in advance. By the terms of the agreement, the goods were to be measured at Mazrod and delivered at Padshu. In default of delivery it was stipulated that the value of the goods should be paid for at the market rate at Purola. The goods were not delivered in pursuance of the agreement. *Held*, in an action brought to recover their value at the market rate at Purola, that the cause of action arose at Padshu, where the goods ought to have been delivered. **CHUNITAL MANIKIALBHAI v. MAHIPATRAY VALAD KHUNDU** . 5 Bom., A. C., 38

87. ————— *Goods delivered through carrier.—Delivery at consignor's risk.*—*A.* sued *B.* for goods sold in Madras and delivered to *B.* personally outside the local limits of the High Court's original jurisdiction. *B.* dwelt outside those limits; the goods were sent to him at his request, sometimes by sea, sometimes through the post office, but always at *A.*'s risk during the journey. *Held* that the suit must be dismissed for want of jurisdiction. So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee. **WINTER v. WAY** . 1 Mad., 200

88. ————— *Letters Patent, cl. 12.—Non-delivery of goods.*—Plaintiffs contracted at Cawnpore with the East Indian Railway Company to deliver goods in Madras. The East Indian Railway does not run into the jurisdiction of the Madras High Court. The Railway Company made default in delivery of the goods, and the plaintiffs sued them in the Madras High Court for damages for the breach of contract. No leave to sue (under section 12 of the Letters Patent) was obtained. The Court of first instance dismissed the suit for want of jurisdiction. *Held*, on appeal, following *Gopikrishna Gossami v. Nilkomul Banerjee*, 13 B. L. R., 461; and *Vaughan v. Weldon*, L. R., 10 C. P., 47, that the breach of contract having taken place at Madras, the cause of action had wholly arisen within the jurisdiction of the High Court. **MUHAMMAD ABDUL KADAR v. E. I. RAILWAY COMPANY** [L. L. R., 1 Mad., 375]

89. ————— *Part of cause of action in jurisdiction.*—Where defendant, in an action for goods sold and delivered, pleaded want of jurisdiction, inasmuch as the whole cause of action did not arise within the jurisdiction, the Court found that a material part of the cause of action had arisen within the jurisdiction, and gave a decree for plaintiff, leaving it to defendant to dispute execution if so advised. **DOORGAPERSAD BOSE v. WATERS** [1 Ind. Jur., N. S., 191]

90. ————— *Civil Procedure Code, 1859, s. 5.*—By a contract entered into at Beerpore, in the district of Nuddea, the plaintiff agreed to supply indigo seed to the defendant, the seed to be paid for on delivery by an order to be sent to the plaintiff on receipt of the seed. The plaintiff

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Breach of contract—continued.**

resided at Berhampore, in the district of Moorshedabad, and the defendant carried on business at Beerpore, in the district of Nuddea, where delivery was to be made. The seed was delivered by the plaintiff as agreed, but the defendant refused to pay for it. In an action brought in the Moorshedabad Court to recover the price of the seed,—*Held* that the Moorshedabad Court had jurisdiction to entertain the suit. The refusal of payment by the defendant, which was to have been made in the district of Moorshedabad, was a sufficient cause of action under section 5, Act VIII of 1859, to enable the plaintiff to sue in that Court. *Sembla*,—The words "cause of action" in that section do not mean the whole cause of action. **HILLS v. CLARK**

[14 B. L. R., 367 : 23 W. R., 63]

91. ————— *Place of performance of contract.—Suit for price of seed.*—Plaintiff delivered to the defendant at the latter's factory at Cossipore fifty maunds of indigo seed. It was agreed that payment should be made at plaintiff's place of business within the limits of the Munsif's Court at Krishnagar. *Held* that the latter Court had jurisdiction to entertain a suit for the price of the seed. **HURRI MOHUN MULLICK v. GOBURDHUN DASS**

[3 C. L. R., 459]

92. ————— *Sale of goods.—Payment of proceeds.*—Where the plaintiffs and defendants made consignments of a certain number of bales of cotton belonging to each for the Mirzapore market and the cotton was unloaded and sold at Cawnpore by direction of the latter, and the proceeds were received by them at Meerut, where they all but one resided, and credited to their accounts,—*Held*, in a suit for damages, that the defendants, who ordered the sale at Cawnpore and profited by the proceeds, and not a defendant who resided at Cawnpore and acted under instructions from the other defendants, were primarily liable; and that the suit was cognisable in the Meerut Court. **LUCKHUR RAM v. MAHANI RAM** 1 Agra, 10

93. ————— *Advances made for delivery of wood.*—Where the suit was brought upon the defendant's breach to deliver wood in pursuance of the terms of the contract,—*Held* that the mere fact that an advance was made within the local jurisdiction of a Court would not give that Court jurisdiction in such suit. **AJODHYA PERSHAD v. GOBIND RAM** 2 Agra, 188

94. ————— *Contract for sale of land.—Suit for purchase-money.*—Where there is a contract of sale of land, an action can ordinarily be brought by the vendor for the purchase-money, whether or not the Court in which the action is brought has jurisdiction over the seat of the obligation which it is sought to enforce. **YOUNG v. MANGALAFILLY RAMAIA** 8 Mad., 125

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Breach of contract—continued.**

95. ———— *Suit for specific performance or return of money.—Land situated without local limits of jurisdiction.*—In consideration of the loan of Rs. 4,000, the defendant agreed to execute a mortgage of certain land beyond the jurisdiction of the High Court to the plaintiff, and agreed to produce his title-deeds, and to make a good title. In the agreement the plaintiff was described as "of Durmahatta in the town of Calcutta, merchant," and the defendant as "of Panchthopy in Zillah Beerbhoom, at present of Coomertooly in Calcutta." In a suit for specific performance of the agreement to execute the mortgage and in the alternative for the return of the Rs. 4,000,—*Held* that, as the plaintiff was described as of Calcutta, the defendant would be entitled to redeem by paying the mortgage-money in Calcutta, and that a money-decree could be made. **SREENATH ROY v. CALLY DOSS GHOSH**

[I. L. R., 5 Cal., 82]

96. ———— *Contract, Ratification of.—Contract relating to lands.*—A., on behalf of her infant son B., contracted with C. that he should be allowed for the maintenance of her daughter whom he was about to marry, land situate at X., that should yield annually Rs. 900. B., after coming of age, contracted at Y. to pay C. the annual allowance, and ratified the contract which had been made by his mother. *Held*, first, that although the contract with B. was entered into at Y., yet, as by that contract he ratified the contract entered into by his mother, and which related to lands at X., the Court of X. had jurisdiction in a suit for recovery of certain of the yearly payments. **KISHOR KINKUR GHOSH v. BOBODOKANTH ROY**

[Marsh., 533; 2 Hay, 656]

97. ———— *Compromise.—Letters Patent, cl. 12.—Compromise outside of decree obtained within jurisdiction.*—Where A. obtained a decree in the late Supreme Court, and subsequently resided out of the local limits, and then executed a compromise in an action brought by B. to prevent A. from proceeding upon the decree of the Supreme Court,—*Held* that the whole cause of action did not arise within the local limits provided by the Letters Patent, and that the Court had no jurisdiction. **FEDA HOSSEIN v. SYEDDOONISSA**

[1 Ind. Jur., N. S., 80]

98. ———— *Foreign judgment, Suit on.—Letters Patent, cl. 12.—Company.—Service of balance order on defendant.—Winding up.*—The defendant, who resided outside the jurisdiction of the High Court, was sued at Bombay as a contributory upon a balance order made by the Court of Chancery in England in the winding up of the plaintiffs' bank. It was contended on his behalf that no part of the cause of action had arisen within the jurisdiction, and that the suit was, therefore, not maintainable. The plaintiffs contended that service of the balance order upon the defendant was necessary, and constituted part of the cause of action, and that as such

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Foreign judgment, Suit on—continued.**

service had been effected upon the defendant in Bombay, the Court had jurisdiction. *Held* that service of the balance order upon the defendant was not necessary; and that as no part of the cause of action had arisen within the jurisdiction, the suit should be dismissed. **LONDON, BOMBAY, AND MEDITERRANEAN BANK, v. BADER BEEBER**

[I. L. R., 5 Bom., 49]

99. ———— *Fraud.—Suit for goods obtained by fraud.—Letters Patent, cl. 12.*—G. went to the plaintiff's place of business in Calcutta, and representing to him that he wanted some jewellery on inspection, and would purchase it if he did not return within ten days, obtained from the plaintiff a quantity of jewellery, depositing as security Rs. 2,000 with the plaintiff. G. having thus obtained the jewellery, took it to K., at his residence, which was out of the local limits of the jurisdiction of the Court, and pledged the jewellery to K. for Rs. 6,000. In a suit brought against G. and K. to recover the jewellery or its value, G. did not appear, and K. alone defended the suit. *Held* that it being, with reference to section 178 of the Contract Act, an essential element in the plaintiff's case that the jewellery had been obtained from the plaintiff by fraud in Calcutta, part of the cause of action against K. arose in Calcutta, so as to enable the Court, leave having been obtained under clause 12 of the Charter, to entertain the suit against him. **KARTICK CHURN SETTY v. GOPAL-KISTO PAULIT**

[I. L. R., 3 Cal., 264]

100. ———— *Legacy, Suit for.—Place of residence of legatee and of heir.*—A suit for a legacy must be brought, not within the jurisdiction where the legatee resides, but within the jurisdiction where the heir resides. **ASHOOTOSH BOSE v. HURSE CHURN NAG**

[16 W. R., 306]

101. ———— *Lost property.—Property lost in one district and found in another.*—A suit to recover property lost in one district and found in another must be instituted in the Court of the district in which it is found. **RAM PARTAB SINGH v. BHOLA-BUTTY KOONWAM**

[9 W. R., 586]

102. ———— *Malicious prosecution, Suit for.—Letters Patent, 1866, cl. 12.—Jurisdiction.*—Where the plaintiff, in an action for malicious prosecution, alleged that the defendant had instituted criminal proceedings against him before the Magistrate of Moradabad, causing a warrant to be issued by the Magistrate, and having him arrested under that warrant in Calcutta,—*Held*, the whole cause of action did not arise at Moradabad; that part of the cause of action arose in Calcutta, so as to entitle the plaintiff, with leave of the Court, to bring an action in the High Court. **LUDDY v. JOHNSON**

[6 B. L. R., 141]

103. ———— *Misrepresentation.—Information as to carriage of goods by railway.*—Where the defendants at C. were asked to obtain

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Misrepresentation—continued.**

information from a railway company as to the cost of carriage of coal from B. to C. which they were about to sell to the plaintiff at C., and they did so, communicating in good faith the result to the plaintiff, and the plaintiff was ultimately compelled to pay to the railway company a much larger sum than the defendant had represented.—*Held*, assuming there was a right of suit, the cause of action must be held to have arisen at C., where the alleged representation must be deemed to have been made. **BENGAL COAL COMPANY v. ELGIN COTTON COMPANY**

[2 N. W., 13]

104. ——— *Letters Patent, cl. 12.*—*Suit to set aside decrees of High Court on ground of misrepresentation.*—It is not necessary to obtain the leave of the High Court under clause 12 of the Letters Patent to sue to set aside a decree of that Court made upon a compromise to which the plaintiff has been induced by the misrepresentations of the defendant to agree, even when it appears from the plaint that the defendants are outside the jurisdiction of the Court. **SOLOMON v. ARDOOL AZIZ**

[4 C. L. R., 366]

105. ——— *Money had and received, Suit for.*—*Place of estate sold and place of receipt of money.*—*R.*, having a right to an estate in P., then in the hands of B., sold it to S. Contemporaneously with the sale, R. and S. by deed bound themselves in common to take all needful steps to obtain possession of the estate from B. R., by a suit in the Supreme Court against B., recovered the estate and mesne profits which were paid to him in Calcutta. In a suit instituted in P. by the representative of S. against R. for the amount so realised by him, it was held that the plaintiff was entitled to recover, and that the cause of action arose in P. **SHARODAPRESAD MOOKERJEE v. BENGAL INDIGO COMPANY**

[1 Ind. Jur., N. S., 32]

106. ——— *Money in Government Treasury.*—*Suit for sum held in deposit by Government for collections made by it.*—Where a suit was brought for the surplus collections of the proprietary profits of an estate made by Government during a period when it was held as Koork tehsil, and it appeared that the Terai District, within which the said estate was situated, had been several times transferred from the Bareilly Division, in which it originally lay, to that of Kumaon, and back again, but that at the time of the institution of the suit it was included within the Kumaon Division, and it further appeared that no portion of the collections in question were in deposit in the Bareilly Treasury.—*Held* that the Bareilly Court had no jurisdiction to entertain the suit. **HEARSAY v. SECRETARY OF STATE FOR INDIA**

6 N. W., 47

107. ——— *Negotiable instruments.*—*Suit on bill of exchange.*—Where a bill of exchange was drawn at Banda, and made payable and dishonoured at Benares, and the defendant also had

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Negotiable instruments—continued.**

his dwelling at Banda.—*Held* that the cause of action did not arise at Agra merely on account of the bill of exchange having been sold at the latter place by a third party, purchaser from defendant. **KISHEN CHUND v. KISHAN LALL** . 2 Agra, 123

108. ——— *Hundi.*—*Whole cause of action.*—*Letters Patent, cl. 12.*—Where plaintiff brought an action to recover money paid by him in Calcutta, on hundis drawn by defendant beyond the local limits, but sent by him to Calcutta, and there accepted and paid by the plaintiff.—*Held* that the whole cause of action arose within the local limits of Calcutta, so as to give the High Court jurisdiction under the 12th clause of the Charter. **JOAN MULL v. MUNNOLOLL** . 1 Ind. Jur., N. S., 219

109. ——— *Hundi.*—*Letters Patent, cl. 12.*—*A.*, who resided and carried on business in the Upper Provinces, sent cotton for sale to B. in Calcutta, and drew hundis against it upon B., payable in Calcutta. The hundis were negotiated, and afterwards presented to B.'s gomastah in Calcutta, and there accepted and paid by him for B. In a suit by B. against A. for balance of account,—*Held* that the whole cause of action arose in Calcutta within the meaning of clause 12 of the Letters Patent. **DHUNRAJ v. GOVINDARAM**

[1 B. L. R., O. C., 76]

110. ——— *Hundi.*—*Suit on hundi.*—A suit for recovery of the amount of a dishonoured hundi drawn at Shekoabad and payable at Furruckabad cannot be brought in the Court of the Munsif of Shahjehanpore, the abode of the endorsee of the dishonoured hundi, but where none of the drawers or endorsers resided. **RAGHOOBUR DYAL v. DWARKA DASS** . 3 N. W., 343

111. ——— *Hundi.*—*Whole cause of action.*—*Suit on hundi made out of jurisdiction.*—*Letters Patent, cl. 12.*—The contract that the indorser of a hundi enters into is to pay the amount of the hundi to the holder (in case the drawee makes default) in the place where the hundi has been indorsed by him, and not in the place where it is made payable. Where, therefore, a hundi indorsed and delivered in Ajmere was payable in Bombay, where it was dishonoured, it was held that the cause of action of the holder against the indorser did not arise wholly in Bombay. *Quare*,—Whether it arose in part in Bombay. **SUGANCHAND SHIVDAS v. MULCHAND JOHARIMAL** . 2 Bom., 270

112. ——— *Hundi.*—*Suit on hundi.*—The defendant, who resided in the district of M., but carried on business through an agent at Calcutta, by a letter dated 4th August 1874, signed by such agent, authorised the plaintiff to advance money to H. K., at M., on hundis drawn there by him upon defendant's firm at Calcutta, the hundis to be accepted and paid at maturity at Calcutta. Hundis were so drawn and accepted, but the money advanced

4 x 2

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Negotiable instruments—continued.**

was not paid at maturity. In a suit at M. against the defendant as drawer or acceptor, it was held that the Court at M. had no jurisdiction to try the case. *Per* BROUGHTON, J. If the letter of 4th August 1874 amounted to a request to the plaintiff in M. to pay money at M. to be repaid at Calcutta, no cause of action, upon which a suit would lie against the defendant in the district of M., could arise upon it. **JUMOONA PERSHAD v. ZAIBUNNISA**

[5 C. L. B., 268]

113. ——— *Hundi.*—*Suit on hundi.*—*Letters Patent, cl. 12.*—Where a hundi had been drawn out of the jurisdiction, upon a person within the jurisdiction, indorsed and delivered, out of the jurisdiction to one who, out of the jurisdiction, indorsed the same, and sent it to a person who, within the jurisdiction, received it, got it accepted, and presented it for payment to the drawee, by whom it was dishonoured within the jurisdiction,—*Held* that the dishonour of the hundi by the drawee within the jurisdiction was a material part of the cause of action by the holder against the first indorser, and consequently that such material part of the cause of action having arisen within the jurisdiction, and the holder having obtained leave to bring his suit under clause 12 of the Letters Patent, 1865, the Court had jurisdiction. **MULCHAND JOHARIMAL v. SUGANCHAND SHIVDAS** . I. L. R., 1 Bom., 23

Affirming the decree of the Court below in **SUGANCHAND SHIVDAS v. MULCHAND JOHARIMAL**

[12 Bom., 113]

114. ——— *Promissory note made and delivered within jurisdiction.*—*Letters Patent, cl. 12.*—Where a promissory note payable within the jurisdiction is also in the first instance delivered within it, the cause of action arises within the jurisdiction. **ISSER CHUNDER SHIN v. CRUZ**

[1 Ind. Jur., N. S., 233]

115. ——— *Promissory note made out of jurisdiction.*—*Defendant out of jurisdiction.*—The proclamation of the Governor General in Council, dated 26th August 1865, did not revive the jurisdiction of the late Supreme Court, or affect the local limits under the Letters Patent; therefore the High Court had no jurisdiction to entertain a suit on a promissory note made at Allyghur but payable in Calcutta, the defendant residing at Allyghur. **INDIAN CARRYING COMPANY v. MCCARTHY**

[1 Ind. Jur., N. S., 61]

116. ——— *Promissory note.*—In an action on a promissory note, when the note was made payable to A., who resided in Calcutta, and was executed and delivered to him in Calcutta,—*Held* the whole cause of action arose in Calcutta. **RAMGOPAL LAW v. BLAQUIERE** . 1 B. L. R., O. C., 35

117. ——— *Promissory note.*—*Letters Patent, 1865, cl. 12.*—The High Court has

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Negotiable instruments—continued.**

no jurisdiction to entertain a suit brought upon a promissory note made without, but payable within, the local limits of its jurisdiction, leave to institute the suit not having been first obtained. **MOTHOORMOHUN ROY v. JADDOMONEY DOSSEE** . 10 B. L. R., 122

118. ——— *Promissory note.*—*Suit on.*—*Delivery of note.*—Where the payee sued the maker of a note which was dated "Madras, 27th September 1860," and delivered to the plaintiff at Madras,—*Held* that the High Court had jurisdiction to entertain the suit, though the defendant had signed the note at Secunderabad, whence he had sent it by post to the plaintiff. The making of a promissory note is altogether the act of the maker, and delivery according to the promise is required to make it complete. **WINTER v. ROUND** . 1 Mad., 202

119. ——— *Promissory note.*—*Suit on.*—*Maxim "Debitum et contractus sunt nullius loci."*—The High Court has no jurisdiction to entertain a suit on an instrument stipulating for the payment of money generally, when the defendant resides beyond the local limits, and such instrument was signed by him beyond those limits. Jurisdiction to entertain a suit on a promissory note is *prima facie* shown upon a plaint alleging that the note was delivered by the defendant at Madras, and that he thereby promised to pay at Madras. Remarks on the maxim "*Debitum et contractus sunt nullius loci.*" **RAJENDRA RAU v. SAMA RAU** . 1 Mad., 436

120. ——— *Promissory note.*—*Place of performance.*—*Code of Civil Procedure (Act X of 1877), s. 17, Illus.*—Where a promissory note is executed in one district, and it is agreed that the amount of the note shall be paid in another, the Courts of the latter district have jurisdiction to entertain a suit on the note. The illustrations to section 17 of the Code of Civil Procedure afford no safe guide as to what is meant in the Code by the term "cause of action." *Gopi Krishna Gosami v. Nil Komul Banerjee*, 13 B. L. R., 461; *Muhammad Abdul Kadar v. E. I. Railway Co.*, I. L. R., 1 Mad., 376; and *Vaughan v. Weldon*, L. R., 10 C. P., 47, followed. **LALJEE LALL v. HARDEY NARAIN** [I. L. R., 9 Cal., 105; 11 C. L. R., 125]

121. ——— *Partnership.*—*Place of conduct of partnership transactions.*—*Suit for balance due.*—A contract was entered into at Rutlam for the establishment of a partnership to be carried on principally at Muttra, where all the transactions were to be conducted by means of the capital embarked in the concern at that place. *Held* that the cause of action in a suit for the balance resulting from these partnership transactions arose at Muttra. **LUCHMEER CHAND RADHAKISHEN v. ZORAWAR MULL** [1 W. R., P. C., 35; 8 Moore's L. A., 291]

122. ——— *Letters Patent.*—*cl. 12.*—*Suit against non-resident foreigners.*—Where

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Partnership—continued.**

an agreement in writing was signed by the plaintiff and the defendants at Secunderabad, in the territories of the Nizam, for a partnership in a tannery business to be carried on at Bakuram, near Hyderabad, and by the terms of the agreement the tanned skins were to be sent to the plaintiff at Madras, for sale or shipment to England, and hundis in respect of the goods sent to Madras were to be drawn upon the plaintiff at Madras and paid by him, and accounts of the partnership transactions were to be sent to the plaintiff once in eight days.—*Held*, in a suit for an account of the partnership dealings, that the cause of action had arisen in part within the original civil jurisdiction of the High Court, and, the leave of the Court to bring the suit having been obtained under section 12 of the Letters Patent of 1865, that the Court had jurisdiction to entertain the suit. *Held*, also, that the jurisdiction of the Court was not affected by the circumstance that the defendants were non-resident foreigners. **BAVAH MRAH SAIB v. KHAJEE MRAH SAIB**

[4 Mad., 218]

123. — Principal and agent.—

Principal residing out of jurisdiction.—*Held* that the Court at Furruckabad had no jurisdiction to entertain a suit against principals residing elsewhere, brought by the agents at Furruckabad. **KHOOSHAL CHUND v. PALMER**

. 1 Agra, 280

124. — Registration.—Suit to compel

registration.—*Registration Act, 1864, s. 21.—Civil Procedure Code, 1869, s. 5.*—Defendant executed in favour of plaintiff at Combaconum, in the zillah of Tanjore, a deed of mortgage of lands situated at a place within the jurisdiction of the District Munsif of Perambalur, in the Trichinopoly zillah. The deed, to make it enforceable, required registration, the place of registry (from the situation of the lands) being Perambalur. Plaintiff appeared at the registry office, but defendant did not. In consequence the Sub-Registrar refused to register the deed. The present suit was brought to compel defendant to join in registering it. The District Munsif of Perambalur dismissed the suit upon the ground that the cause of action did not arise within his jurisdiction, but at Combaconum. The Civil Judge confirmed this decision, as he found that the defendant was a permanent resident of Combaconum. Upon special appeal, —*Held*, reversing the decree of the Civil Judge, that as section 21 of the Registration Act (XVI of 1864), which governed this case, rendered it necessary that the deed should be registered in Perambalur, the defendant was under an obligation to plaintiff to get the document registered at that place; that the breach of the obligation was the cause of action, and that consequently the Court at Perambalur had jurisdiction, as it was the place of the fulfilment of the obligation. **SAMI AYYANGAR v. GOPAL AYYANGAR**

[7 Mad., 176]

125. — Release.—Suit to set aside release.—*Letters Patent, 1865, cl. 12.*—The plaintiff, resident in Calcutta, sued *H.*, resident in Bombay,

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.****(c) CAUSE OF ACTION—continued.****Release—continued.**

but carrying on business by his gomastah in Calcutta, and others resident in Bombay, to set aside a release executed in Calcutta of his interest in certain property situate in Bombay, on the allegation that it had been obtained from him by false representations made by *H.* The plaintiff prayed that the release might be declared void, and cancelled; that a certain inventory and account relating to the said property, which the plaintiff alleged he had been induced to file in Bombay by the false representations of *H.* might be declared not binding on the plaintiff; for an account; and for the appointment of a receiver. *Held* that the whole cause of action did not arise in Calcutta so as to enable the plaintiff to sue in Calcutta without leave of the Court under clause 12 of the Letters Patent. The word "defendant" in that clause means all the defendants, if there are several defendants to a suit. It is not sufficient that one of the defendants should dwell or carry on business within the jurisdiction. **ISMAIL HADJEE HUBBEE v. MAHOMED HADJEE JOOSUB. ROHIMA BYE v. MAHOMED HADJEE JOOSUB**

. 13 B. L. R., 91: 21 W. R., 303

126. — Representative of deceased person.—Suit against representative.—The representative of a deceased person may be sued in that Court within the jurisdiction of which the cause of action with the deceased person arose. **LADD v. PARBUTTY DOSSEE**

. 2 Hyde, 18

3. SUITS FOR LAND.**(a) GENERAL CASES.**

127. — General cases of suits for land.—Land partly in, and partly out of, jurisdiction.—*Letters Patent, cl. 12.*—Some of the property being situated in, and some out of, the jurisdiction of the Court,—*Held* that the Court had jurisdiction to try the suit according to the true construction of clause 12 of the Charter, 1865, in reference to the whole of the property. **PRASANNA MAXI DAS v. KADAMBINI DAS**

. 3 B. L. R., O. C., 85

128. — Land partly in, and partly out of, jurisdiction.—*Letters Patent, cl. 12.*—Under clause 12 of the Letters Patent, the High Court has jurisdiction to entertain suits for land, whether the land is situated wholly or in part only within the local limits of its ordinary original jurisdiction, leave of the Courts having been first obtained in the latter case. **JAGADAMBA DAS v. PADMAKANT DAS**

. 6 B. L. R., 686

129. — Suit for land in territories of Raja of Pudukotta.—Trichinopoly Court, Jurisdiction of.—In a suit for the recovery of land situated within the territories of the Raja of Pudukotta,—*Held* that the Civil Court of Trichinopoly had no jurisdiction. **RANGAIYAN v. HARI KRISHNA AIYAN**

. 2 Mad., 437

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(a) GENERAL CASES—continued.**

General cases of suits for land—continued.

130. ————— *Land in possession of Receiver.*—The High Court cannot exercise jurisdiction in respect to land which is situate out of its local limits, even though it be in possession of the Receiver. *DEMONAUTH SREEMANY v. HOGG*

[1 Hyde, 141]

131. ————— *Award.*—*Application to file award.*—*Cause of action.*—*Civil Procedure Code, 1859, s. 327.*—The plaintiff and defendant entered into partnership for the purpose of carrying on the cultivation and manufacture of tea, on a tea estate at Darjeeling, of which they were the owners in certain shares. The deed was executed and registered in Calcutta, but both the parties resided out of the jurisdiction. The deed contained provisions for a reference to arbitration in case of difference or dispute in any matters relating to the partnership. Differences having arisen, arbitrators were appointed in accordance with the clause in the deed. The arbitrators subsequently made their award in Calcutta to the following effect: That the defendant's share in the partnership property should stand charged with the payment of a certain sum found to be due by him to the plaintiff, and that the defendant should execute a mortgage of his share to the plaintiff as security for such payment; that the partnership should be dissolved on certain terms, and that the tea garden at Darjeeling should be sold in Calcutta. In an application, under section 327, Act VIII of 1859, to file the award,—*Held*, affirming the decision of the Court below, that the High Court at Calcutta had jurisdiction to file the award. Section 327 gives jurisdiction to file an award to any Court in which a suit in respect of the subject-matter of the award might be instituted. A suit in respect of the subject-matter of this award would not be a suit for land, but a suit in which, by reason of the execution of the deed of partnership in Calcutta, a part of the cause of action arose there; such a suit could, with leave, have been instituted in the High Court: that Court, therefore, had jurisdiction to file the award. *KELLIE v. FRASER* . . . I. L. R., 2 Cal., 445

132. ————— *Claim to attached property.*—*Claim under Civil Procedure Code, 1859, s. 246.*—A claim to property under section 246, Act VIII of 1859, is virtually a suit for land. *SAGORN DUTT v. RAMCHUNDER MITTAR* . . . 1 Hyde, 136

133. ————— *Foreclosure.*—*Les loci rei sitæ.*—When land forms the subject-matter of the suit, the *les loci rei sitæ* applies. A suit for foreclosure is a suit for land. *BLAQUIERE v. RAMDHONE DOSS* . . . Bourke, O. C., 319

134. ————— *Foreclosure of property out of jurisdiction.*—*Practice.*—A suit for foreclosure of land out of the jurisdiction is a "suit for land" and cannot be brought in the High Court at Calcutta on the ground that defendant is living in

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(a) GENERAL CASES—continued.**

Foreclosure—continued.

Calcutta. In such cases the Court will return the plaint. *BIBER JAUN v. MAHOMMED HADEE*

[1 Ind. Jur., N. S., 40]

135. ————— *Cause of action.*—*Property out of jurisdiction.*—A suit by a mortgagee for foreclosure must be brought in the district where the land is. In like manner a suit by a mortgagee who is entitled, not to a foreclosure, but to a decree to establish his charge and for the sale of the specific property charged, must be brought in the Court within the legal limits of whose jurisdiction the property is. The remedy against the borrower personally under a mortgage-deed must be pursued in the district in which the cause of action arose. But when the object of the lender is to proceed to enforce his charge against the property (such property being immoveable) his suit must be brought in the district where the property is situated. *BULDER DOSS v. MOOL KOORE* . . . 2 N. W., 19

136. ————— *Portion of property is mofussil.*—Where a plaint prayed for foreclosure of a mortgage in the English form of certain land situated partly in Calcutta and partly in the mofussil, and for an account,—*Held* that leave to sue having been obtained under clause 12 of the Letters Patent, the Court had power to make a decree with respect to the whole of the property. *BANK OF HINDUSTAN, CHINA, AND JAPAN, v. NUNDOLAL SEN* [11 B. L. R., 301]

137. ————— *Injunction.*—*Civil Procedure Code, s. 5.*—*Suit in personam.*—*Suit for injunction to restrain nuisance.*—The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants, and for damages for the injury done thereby. The defendants were a railway company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India, and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorised and directed to make and maintain such railway stations, offices, machinery, and other works (connected with making, maintaining, and working the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867, under the sanction of the Bengal Government, on land purchased by the Government in 1854 for the purposes of the railway under Regulation I of 1824 and Act XLII of 1850, and which had been made over to the defendants. *Held* that the suit was *in personam*, and not a suit "for land or other immoveable property" within the meaning of clause 12 of the Letters Patent, 1865, or of section 5 of Act VIII of 1859. *RAJMOHUN BOSE v. EAST INDIAN RAILWAY COMPANY* . . . 10 B. L. R., 241

138. ————— *Letters Patent, cl. 12.*—*Suit to restrain working of mine.*—In a suit

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(a) GENERAL CASES—continued.****Injunction—continued.**

brought against the owners of a mine adjacent to a mine belonging to the plaintiffs, the plaintiff alleged that a certain boundary line existed between the two mines, and prayed for a declaration that the boundary line was as alleged, and that the defendants might be restrained by injunction from working their mine within a certain distance from such boundary line. The defendants in their written statement disputed the plaintiffs' allegation as to the course of the boundary line. The mines were situated out of the jurisdiction of the High Court, but both the plaintiffs and defendants were personally subject to the jurisdiction. *Held* that the suit was a suit for land within clause 12 of the Letters Patent, and therefore one which, the land being in the *mofussil*, the Court had no jurisdiction to try. On the facts stated in the plaint and before the filing of the defendants' written statement, the Court granted an *interim* injunction, and refused an application to take the plaint off the file. **EAST INDIAN RAILWAY COMPANY v. BENGAL COAL COMPANY** . . . I. L. R., 1 Calo., 95

139. ——— **Lien.—Letters Patent, cl. 12.—Leave to institute suit in High Court.—***Suit to have maintenance declared a charge on property in the mofussil.*—The widow of one A. D. applied under clause 12 of the Charter for leave to bring a suit in the High Court against the administrator of her husband's estate to have it declared that the maintenance allowed her was insufficient and to have it enhanced, and declared as a charge on the said estate. She prayed also for an account, and the appointment of a receiver. It appeared that all the moveable property and the greater part of the immoveable was in Benares; a portion only of the latter being within the ordinary original civil jurisdiction of the High Court. The application was granted on 31st May 1873, leave being reserved to the defendant to move to have this order set aside. The plaint was then filed. When the case came on for settlement of issues, the defendant questioned the jurisdiction of the High Court, and the Judge of the Court of original jurisdiction, who found that the defendant was in no way subject personally to its jurisdiction, withdrew the permission which had been granted to the plaintiff to institute the suit. *Held* that, as the parties and witnesses resided in Benares, there was no reason why the suit should be tried in Calcutta, and as there was ample property within the jurisdiction of the Court at Benares to satisfy the maintenance, there was no necessity for its being declared to be a charge on the Calcutta property. **RADHA BIBEE v. MUCKSOODUN DASS** . . . 21 W. R., 204

140. ——— *Suit to have lands declared liable in satisfaction of bond.*—A suit to have certain lands declared liable for the satisfaction of an instalment bond is substantially a suit for an interest in land, and, as such, cognisable by the Courts within whose jurisdiction the property is situated, even though the cause of action has not

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(a) GENERAL CASES—continued.****Lien—continued.**

arisen there and the defendants reside elsewhere. **RAM LALL MOOKERJEE v. CHITTRO COOMARRE** [15 W. R., 277]

141. ——— *Suit to enforce mortgage lien on land.*—A suit for the enforcement of a mortgage lien and for a decree that the money due be realised from the property is a suit for immoveable property and must be brought in the Court within the jurisdiction of which the property is situated. **AHMEDDEE BEGUM v. DABEE PERSAUD** [18 W. R., 287]

MAHOMED KHULNEL v. SONA KOOR [23 W. R., 123]

142. ——— *Suit to enforce mortgage lien on land.*—A suit brought upon a mortgage, praying for a decree for the amount due thereunder, and that in default of payment the land mortgaged may be sold, is a suit for land within the meaning of section 5 of Act VIII of 1859, and is rightly brought in the Court of the district within which the land is situate. **IN THE MATTER OF THE PETITION OF LESLIE** . . . 9 B. L. R., 171

S. C. LESLIE v. LAND MORTGAGE BANK OF INDIA [15 W. R., 269]

143. ——— *Suit to recover mortgage-debt by sale of mortgaged property out of the jurisdiction.*—A suit for the recovery of a mortgage-debt by the sale of the mortgaged property is not a suit for land within the meaning of section 5 of the Code of Civil Procedure. A Court may decree the sale of mortgaged immoveable property though situated beyond its jurisdiction. **YENKOBA BALSHET KASAR v. RAMBHAJI VALAD ARJUN** [9 Bom., 12]

144. ——— **Partition.—Letters Patent, cl. 12.**—A suit for partition of land is a suit for land within the meaning of clause 12 of the Letters Patent. **PADAMANI DASI v. JAGADAMBA DASI** [6 B. L. R., 134]

145. ——— *Suit for partition where moveables are within, and immoveables outside, the jurisdiction.—Practice.—Leave to sue under cl. 12 of Letters Patent.—Leave to sue as a pauper.*—The plaintiff sued the defendant for partition of family property, which consisted both of moveable and immoveable property. The moveable property was within the jurisdiction, but all the immoveable property was outside the jurisdiction of the Court. *Held* that the case did not fall within the provisions of clause 12 of the Letters Patent, 1865, and that the Court had no jurisdiction to hear the suit. The fact that his suit included a claim for moveables, which were within the jurisdiction, did not entitle the plaintiff to sue in the High Court, nor could he obtain leave for that purpose under clause 12 of the Letters Patent. The words "all other cases" in clause 12 of the Letters Patent, 1865,

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(a) GENERAL CASES—continued.****Partition—continued.**

do not include cases of suits for immoveable *plus* moveable property. They refer to cases in which immoveable property is not involved. Leave to sue under clause 12 of the Letters Patent, 1865, cannot be implied from the fact that leave to sue as a pauper has been granted to a plaintiff. Leave for the former purpose must be distinctly sought and obtained. **JAIRAM NARAYAN RAJE v. ATMARAM NARAYAN RAJE** . . . I. L. R., 4 Bom., 462

146. ———— Redemption.—Letters Patent, cl. 12.—Held that a suit for redemption is a suit for land; therefore if the land, the subject of the mortgage, is beyond the local limits, the High Court has no jurisdiction under the 12th clause of the Charter. **LALLMONEY DASSI v. JUDDOO NATH SHAW** . . . 1 Ind. Jur., N. S., 319

147. ———— Suit for redemption where mortgage includes other lands out of jurisdiction.—Account of all the mortgaged lands.—In a suit for redemption of lands lying within the district of Mirzapur, but included in the same mortgage with other lands lying within the domains of the Maharaja of Benares, the Subordinate Judge of Mirzapur took an account of the sums realised by the mortgagee from all the lands mortgaged, and finding that these sums were sufficient to discharge the entire mortgage-debt, gave the plaintiff the decree sought; the lower Appellate Court dismissed the suit, on the ground that such account could not be taken without deciding questions lying *ultra vires* of the Mirzapur Court. **Held** that the Mirzapur Court might take such account for the purpose of deciding whether the entire mortgage-debt had been satisfied, and might give the plaintiff a decree for the redemption of the property lying within the local limits of its jurisdiction, notwithstanding that in doing so it would have incidentally to determine questions relating to lands lying within the domains of the Maharaja. **GIRDHARI v. SHEO RAJ**

[I. L. R., 1 All., 431]

148. ———— Rent.—Suit for rent.—Civil Procedure Code, 1859, s. 5.—Residence of defendant.—Title to land incidentally raised.—A suit to recover the rents of land situated in district J., may be brought in district S., where the defendant is residing, although in such suit the plaintiff's title to the land in respect of which the rent is sought to be recovered may incidentally come in question. **CHINTAMAN NARAYAN v. MADHAVRAY VENKATESH**

[6 Bom., A. C., 29]

149. ———— Suit for arrears of rent.—Letters Patent, cl. 12.—A leased to B. for 25 years, commencing from October 1855, certain aurengs or pieces of ground situated in the zillah of Beerbhoom in Bengal at a certain rent payable monthly, B. entering into a covenant to pay the rent. The property based was a "loha mehal," or iron mine, and the lessee used it as such and erected

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(a) GENERAL CASES—continued.****Rent—continued.**

smelting furnaces. B. resided in Calcutta. **Held**, in a suit by A. against B. on the covenant for arrears of rent, that the suit was properly brought in the High Court, as it was not a "suit for land" under clause 12 of the Letters Patent of the High Court, 1865, and the defendant dwelt in Calcutta. **KHALUT CHUNDER GHOSH v. MISTO**

[1 Ind. Jur., N. S., 426]

150. ———— Specific performance.—Letters Patent, cl. 12.—Land situated without local limits of jurisdiction.—In consideration of the loan of Rs. 4,000, the defendant agreed to execute a mortgage of certain land beyond the jurisdiction of the High Court to the plaintiff, and agreed to produce his title-deeds, and to make a good title. In the agreement the plaintiff was described as "of Durmahatta in the town of Calcutta, merchant," and the defendant as "of Panchthopy in Zillah Beerbhoom, at present of Coomertooly in Calcutta." In a suit for specific performance of the agreement to execute the mortgage and in the alternative for the return of the Rs. 4,000, **Held** that so far as the suit was a suit for specific performance, the Court had no jurisdiction. **SREENATH ROY v. CALLY DOSS GHOSH**

[I. L. R., 5 Cal., 83]

151. ———— Contract is Calcutta for lands outside.—Defendant executed an agreement in Calcutta to sell plaintiff certain lands out of Calcutta. In a suit for specific performance, **Held** that the Court had jurisdiction to entertain a suit upon the contract, it having been made in Calcutta. **RAM DHONE SHAW v. NORRENMONT DOSSER** . . . Bourke, O. C., 218

Upheld on appeal.

152. ———— Title-deeds.—Suit to recover title-deeds.—Letters Patent, cl. 12.—A suit to recover title-deeds, although it may involve a question of title, is not a suit to obtain possession of land, or to deal in any way with the land itself within the meaning of section 12 of the Letters Patent. **JUGGERNATH DOSS v. BRIJNATH DOSS**

[I. L. R., 4 Cal., 322; 3 C. L. R., 375]

153. ———— Trusts.—Suit for land subject to a trust.—Trustees personally subject to jurisdiction.—Although the High Court, in the original jurisdiction, has no jurisdiction over land or other immoveable property situate beyond the limits of Calcutta, and can make no adjudication of the right and title to such land, yet where a party is personally subject to the jurisdiction, the Court has power to declare whether or not such party holds such land subject to a trust. **BAGRAM v. MOSES**

[1 Hyde, 294]

154. ———— Trust estate.—Receiver.—Account.—The plaint, in a suit brought by some of the persons appointed trustees under a deed of endowment of certain land against their co-

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(a) GENERAL CASES—continued.****Trusts—continued.**

trustees who were in possession, alleged that the defendant-trustees had ousted the plaintiffs and had committed breaches of trust, and prayed that the deed might be construed and given effect to, and for a declaration that the plaintiffs were entitled to be sebaits jointly with the defendants, for the settlement of a scheme for the performance of the worship, for the appointment of a receiver, for an injunction to restrain the defendants from interfering with the property, and for an account. By the deed the land was given to idols named therein, and the plaintiffs and defendants were appointed sebaits and managers of the property, and were directed to accumulate for the benefit of the idols any surplus over and above the expenses of management, but were themselves to have no beneficial interest in the property. The land, the subject of the deed, was situated out of Calcutta, but all the parties to the suit resided within the local limits of the High Court's jurisdiction. *Held* that the suit was not a suit for "land or other immoveable property" within clause 12 of the Letters Patent, and therefore the Court had jurisdiction to entertain it without leave to sue being obtained. The Court might, if necessary, appoint a receiver of such property and direct an account. **JUGGODUMBA DOSSEH v. PEDDOMONEY DOSSEH** **15 B. L. R., 318**

155. ————— *Deed of trust giving trustees power of sale of land in the mofussil.—Suit by creditor to have trusts carried out.*—*M.* and *L.* were the joint absolute owners of certain land in the mofussil, *M.* having a 14-anna share, and *L.* the remaining 2-anna share therein. During the absence of *L.* in England, *M.* executed, on behalf of himself and *L.*, a deed of assignment of the whole of the property to trustees, for the benefit of the creditors of the estate, which was heavily encumbered, on trust to sell the land and distribute the assets to the creditors. The trustees accepted the trust, but difficulties afterwards arose in carrying them out. A suit was thereupon instituted by the plaintiff, a creditor, on behalf of himself and the other creditors, the plaint in which alleged that the trustees were desirous of being discharged, and prayed that the trusts might be carried into effect; that the trustees might be removed; and that a receiver might be appointed to carry out the trusts. To this suit the trustees and *M.* and *L.* were made defendants. *L.*, who was in England, denied any power in *M.* to execute the deed on his behalf: the trustees and *M.* were personally subject to the jurisdiction. *Held*, *per PHAR, J.*, in the Court below, that the plaint disclosed a good cause of action, as the Court, if it had jurisdiction, would have power to make a declaration binding against *L.* as to the validity of the deed of trust, to appoint a receiver of the estate, and to direct a sale which would be binding on *M.* and *L.*; but that the suit being one "for land," within the meaning of clause 12 of the Letters Patent, the Court had no jurisdiction to try it. *Held* on appeal that the suit, having for its object to com-

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(a) GENERAL CASES—continued.****Trusts—continued.**

pel a sale of the whole of the land, including *L.*'s share the title to which was disputed, was a "suit for land" within the meaning of clause 12 of the Letters Patent, and that the Court had no jurisdiction to try it. **DELHI AND LONDON BANK v. WORDIN** [I. L. R., 1 Calc., 249: 25 W. R., 272]

(b) PROPERTY IN DIFFERENT DISTRICTS.

156. ————— *Partition, Suits for.—Separate suits when property is in different districts—Civil Procedure Code, 1859, s. 12.*—A plaintiff may maintain separate suits for partition of immoveable family property where the property is situate within the limits of different districts, and is not bound to try to proceed in one suit in the manner pointed out in section 12, Act VIII of 1859. **SUBBA RAO v. RAMA RAO** **3 Mad., 376**

157. ————— *Foreclosure, Order for.—Mortgaged property situated beyond limits of ordinary original civil jurisdiction.—Civil Procedure Code, 1859, s. 12.*—The Court, at the hearing of a suit, ordered foreclosure of mortgaged property situate beyond the limit of its ordinary original civil jurisdiction under the powers conferred on it by section 12 of Act VIII of 1859. **KHETRO MOHUN DOSS v. CHUNDRA MONNY DABEN** **Cor., 125**

158. ————— *Possession, Suit for.—Suit for property in different districts.*—In a suit to establish a claim against three properties mortgaged to the plaintiff but situate in different districts, where one of the defendants (the appellant to the High Court) was interested in that only which lay in the district of Moorshedabad, *Held* that causes of action against different defendants had been joined in the same suit contrary to the provisions of section 12, Act VIII of 1859; but as the cause of action against the appellant was one which the Subordinate Judge of Moorshedabad was legally competent to try without the permission of the High Court, the appellant could not object to that Judge having tried it. **KHETOOSSE CHEROORIA v. BANEE MADHUB DOSS** [12 W. R., 114]

159. ————— *Decree, Effect of.—Property in two different districts.—Leave of Court.*—Where property was situated in Bhagulpore and other property in Tirhoot, and no leave had been obtained to include the property in Bhagulpore, *Held*, a decree in the Tirhoot Court could have no effect as against the property in Bhagulpore. **BUNGSE SINGH v. SOODIST LALL** [I. L. R., 7 Calc., 739: 10 C. L. R., 263]

160. ————— *Power of Appellate Court to give leave.—Civil Procedure Code, 1859, s. 12.—Remand, Order in nature of.—Property in different districts.—Decrees of District Courts.—Power of Appellate Court to amend.*—Neither under section 12 of Act VIII of 1859, nor in any other way,

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(b) PROPERTY IN DIFFERENT DISTRICTS—continued.****Power of Appellate Court to give leave—continued.**

has the High Court in its appellate capacity power to give jurisdiction to a District Court to enquire into facts, as upon a remand, in a suit decided in the Court of another district, and relating to lands in the latter. Of two mortgages, between the same parties, the first comprised four villages, of which three were in district A., and a fourth property was in district B. The second mortgage comprised, in addition to the above, three other villages in district B. Suits brought in both districts by the assignee of the mortgages against the mortgagor were thus framed, *viz.*, in the suit in district A. for possession upon foreclosure of both mortgages, and for a declaration of the plaintiff's right as purchaser of one of the properties; and in the suit in district B., for payment of the debt on the second mortgage. Both suits were dismissed. The High Court, hearing appeals in both suits together, affirmed the dismissal of the suit in district B., and remanded the other to the Court of first instance in district A., to have the proportionate value of the properties determined, with a view to the apportionment of the liabilities of the parties by way of contribution. As the defendant who succeeded in both suits in the District Courts raised no question of jurisdiction, each of them might be taken to have had the consent of parties to its hearing the whole suit before it. But no such consent could be deemed to have been given to the order of the High Court made as above stated on contested appeals. This order was, accordingly, unauthorised. Although wide powers of amendment, of framing new issues, and of modifying decrees are conferred upon the High Court by provisions in the Code, of which the plain meaning is not to be narrowed by judicial construction, these powers were exceeded in the change of the suits by the order in question into a suit of a description differing totally from that of either of them, as originally decreed; and this without the consent of the parties. *KAMINI SUNDARI CHAUDHRANI v. KALI PROSUNNO GHOSH* [I. L. R., 12 Calc., 225: L. R., 12 I. A., 215]

161. — Power of High Court to sanction trial in Sonthal Pergunnahs.—*Civil Procedure Code, 1859, ss. 12 and 386.—Suit for land above ₹1,000.—Beng. Reg. III of 1872, s. 2.—Beng. Civil Courts Act (VI of 1871).—Act VIII of 1859 was in force in 1876 in the Sonthal Pergunnahs under section 2, Bengal Regulation III of 1872, as regards suits triable in Courts constituted under Act VI of 1871. Section 4 of that Regulation (read with the notification of the Lieutenant-Governor, dated 4th August 1873) vesting the Deputy Commissioner of the district of the Sonthal Pergunnahs with the powers of a District Judge as described in Act VI of 1871, had the effect of making the Sonthal Pergunnahs a district as defined by section 386 of Act VIII of 1859; and, therefore, under section 12 of Act VIII of 1859, the High Court had power to sanction the trial of a suit for land situated*

JURISDICTION—continued.**3. SUITS FOR LAND—continued.****(b) PROPERTY IN DIFFERENT DISTRICTS—continued.****Power of High Court to sanction trial in Sonthal Pergunnahs—continued.**

in the Sonthal Pergunnahs, in which the value of the subject-matter exceeds ₹1,000, in the Civil Court competent to try it. *KALIPROSAD RAI v. MEHER CHANDRO ROY*

[I. L. R., 4 Calc., 222: 2 C. L. R., 478]

162. — Execution of decree made by Court without jurisdiction.—*Place of suing.—Suit for sale of mortgaged property.—Civil Procedure Code, ss. 16, 20.*—In 1879 *R.* gave *J.* a bond containing a simple mortgage of immovable property. Subsequently *R.* and *P.* jointly gave *D.* a bond containing a simple mortgage of the same property. In 1881 *D.* obtained a decree for the sale of the property under his mortgage, and it was put up for sale and purchased by the plaintiffs. In 1882 *J.* obtained a decree in the Court of the Munsif of *G.* (within the local limits of whose jurisdiction the property was not situated), for enforcement of his mortgage-bond by sale of the property. The plaintiffs objected to the sale, and, their objection having been disallowed, brought a suit for cancellation of *J.'s* decree, so far as it ordered the sale. *Held* that *J.'s* decree could only be regarded as a simple money decree, because, as shown by section 16 of the Civil Procedure Code, the Munsif had no power under the law to direct enforcement of hypothecation against immovable property situate beyond the local limits of his jurisdiction; and neither the proviso to section 16 nor section 20 of the Code met the circumstances. *Held*, therefore, that the plaintiffs were entitled in this suit to have it declared that *J.'s* decree was a simple money-decree only, on the basis of which no process in execution could issue in respect of the property in dispute to oust the plaintiff's possession from any part of it. *GUDEI LAL v. JAGANNATH RAM*

[I. L. R., 8 All, 117]

4. ADMIRALTY JURISDICTION.

See MERCHANT SHIPPING ACT, 1875, s. 3.

[I. L. R., 5 Calc., 453]

163. — Supreme Court, Bombay, Charter of.—*English Admiralty rules.*—The Bombay Charter, December 1823, established the admiralty jurisdiction of the Supreme Court, "as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents, and dependencies annexed and connexed causes whatsoever; and to proceed summarily therein with all possible despatch, according to the course of our admiralty in that part of Great Britain called England." *Held*, on a construction of the Charter, that the rules and practice of the High Court of Admiralty in England prevailed and governed the proceedings in the Supreme Court at Bombay in maritime causes. *LOUGHNAN v. JOSEPH BRULLADINA* . . . 5 Moore's I. A., 137

JURISDICTION—continued.**4. ADMIRALTY JURISDICTION—continued.**

164. ——— **High Court, Bombay.**—*Stat. 3 & 4 Vict., c. 65, s. 6.—Stat. 24 Vict., c. 10.*—The Statute 3 and 4 Victoria, Cap. 65, section 6, does not confer jurisdiction upon the High Court of Bombay on its Admiralty side to entertain causes for necessities supplied to foreign ships, that Statute not extending to India. The Statute 24 Victoria, Cap. 10 (Admiralty Act of 1860), does not extend to India. The jurisdiction of the High Court on its Admiralty side is the same as that exercised in the Court of Admiralty in England prior to the passing of the above Statutes. The extent and nature of the jurisdiction considered and explained. *IN RE THE PROCEEDS OF THE "ASIA."* *EX PARTE HORMASJI* . . . **5 Bom., O. C., 64**

165. ——— *Stats. 3 & 4 Vict., c. 65, 24 Vict., c. 10, and 26 & 27 Vict., c. 24.*—The Imperial Statutes 3 and 4 Victoria, Cap. 65, 24 Victoria, Cap. 10, and 26 and 27 Victoria, Cap. 24, do not apply to the Admiralty or Vice-Admiralty Jurisdiction of the High Court. On that point, *The Asia*, 5 Bom. O. C., 64, followed; *The Portugal*, 5 B. L. R., 323, 330, 331, disapproved of. The High Court, as now existing, was continued, not created, by the Letters Patent of 1865. The High Court has jurisdiction, under the common maritime law, to entertain a suit in respect of a collision upon the high seas between two foreign vessels, although that collision may not have occurred in British or Anglo-Indian waters, and notwithstanding the opposition of the Consul of the State to which the defendant belongs. Whether the High Court has a discretion to decline to entertain such a suit,—*Quare*, Even if there be such a discretion, the Court will ordinarily allow a suit of that nature to proceed. *BARDOT v. THE "AUGUSTA"* . . . **10 Bom., 110**

166. ——— **Collision.**—*Collision between foreign vessels at sea.—Jurisdiction of High Court, Calcutta.*—A collision had taken place at sea in the Bay of Bengal off Juggernaut Pagoda, between the ship *Garland* and the ship *Dragon*, both foreign vessels, which afterwards came within the jurisdiction of the Court. *Held* that the High Court at Calcutta had jurisdiction to try an action in respect of such collision. *THE "GARLAND" v. THE "DRAGON"* [1 Hyde, 275]

167. ——— *Suits for damages for collision.—Cross suit.—Residence out of jurisdiction.*—One who has sued for damages caused by a collision at sea, and out of the jurisdiction of the High Court, subjects himself to a cross-suit for damages caused by the same collision, although himself residing out of the jurisdiction of the Court. An order rejecting, for want of jurisdiction, a plaint brought under such circumstances, was set aside on appeal, and the costs of the appeal ordered to be costs in the suit. **BOMBAY COAST AND RIVER STEAM NAVIGATION COMPANY v. HELMUTX**

[4 Bom., O. C., 149]

168. ——— **High Court, Jurisdiction of.**—*Power to arrest ship for repairs.*—The High Court has no power in its Vice-Admiralty jurisdiction to

JURISDICTION—continued.**4. ADMIRALTY JURISDICTION—continued.****High Court, Jurisdiction of—continued.**

arrest a British-owned ship for repairs. **HOWRAH DOCKING COMPANY v. THE "JEAN LOUIS"** [Cor., 113: 2 Hyde, 255]

169. ——— *24 Vict., c. 10 (Admiralty Act, 1861).*—*26 Vict., c. 24 (Admiralty Act, 1863).*—24 Victoria, Cap. 10 (The Admiralty Act, 1861), and 26 Victoria, Cap. 24 (The Vice-Admiralty Act, 1863), extend to India. The High Court, as constituted by the Charter of 1862, had not, by virtue of the Admiralty Act, 1861, or otherwise, any jurisdiction over claims for disbursements by the master. But after the passing of the Charter of 1865, the Vice-Admiralty Act, 1863, applied to the High Court, as being "a Vice-Admiralty Court established after the passing of that Act in a British possession." *Held*, therefore, that the High Court had jurisdiction, as a Vice-Admiralty Court, to entertain the claim of the master for wages and disbursements on account of the ship. *IN THE MATTER OF THE SHIP "PORTUGAL"* . . . **6 B. L. R., 323**

170. ——— **Judge of Moulmein, Jurisdiction of.**—*Suit on bottomry bond.*—A suit will not lie on an ordinary bottomry bond given by the master of a vessel against the owner to recover the amount thereof. Such a suit cannot be brought in the Court of the Judge of the town of Moulmein, which has no Admiralty jurisdiction against the owner personally; and the vessel cannot be declared to be primarily liable or be sold to satisfy the amount of the bond. **GLADSTONE, WYLLIE, & Co., v. HARRISON** . . . **24 W. R., 50**

5. MATRIMONIAL JURISDICTION.

See CASES UNDER DIVORCE ACT, s. 2.

171. ——— **High Court, Calcutta.**—*Parties resident within jurisdiction.*—The High Court at Calcutta, in its matrimonial jurisdiction, had, before the Divorce Act, 1869, jurisdiction only over parties actually resident within its local limits. **THOMPSON v. THOMPSON** . . . **Bourke, Mat., 1**

172. ——— **Supreme Court, Bombay, Ecclesiastical side.**—*Suit for restitution of conjugal rights.—Parsi.*—The Supreme Court of Bombay on its Ecclesiastical side declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsi wife against her husband. **ARDASHER CURSETJEE v. PEROZEBOYE**

[4 W. R., P. C., 91: 6 Moore's I. A., 348]

173. ——— **Civil Court, Jurisdiction of.**—*Suit by Mahomedan husband for restitution of conjugal rights.*—A Mahomedan husband may sue in the Civil Courts of India to enforce his marital rights by compelling his wife to return to cohabitation with him, and such suit must be determined according to the principles of Mahomedan law in such a case. *Bengal Regulation IV of 1793, section 15.* **BUZLOOR RUHHEM v. SHUMBOONISSA BEGUM. JUDOOONATH BOSE v. SHUMBOONISSA BEGUM**

[8 W. R., P. C., 3: 11 Moore's I. A., 551]

JURISDICTION—continued.**6. TESTAMENTARY AND INTESTATE JURISDICTION.**

174. ——— **High Court, Jurisdiction of.**—*Appeals.*—The High Court has jurisdiction to hear appeals in testamentary cases. **SARODASOON-DEBY v. TINCOWRY NUNDY** . . . 1 Hyde, 70

175. ——— **Power to compel native to prove will.**—The High Court cannot compel a native to prove a will in solemn form, unless he have applied for probate, and thus submitted himself to the jurisdiction. **IN THE MATTER OF TIRUVALUR KIRUSTNAPPA MUDALI** . . . 1 Mad., 59

176. ——— **Probate or letters of administration of British-born subject dying in Moulmein.**—In the case of a British-born subject dying and leaving assets in Moulmein, but no assets in Calcutta, and a will dated 5th August 1865, before Act X of 1865 came into effect,—*Held* that the executrix could not obtain probate or letters of administration, with the will annexed, from the High Court in Bengal. **SAUNDERS v. NGA SHOAY GREN** [8 W. R., 3

JURISDICTION OF CIVIL COURT.

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[1 B. L. R., F. R., 93

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[15 B. L. R., 167; 23 W. R., 453

I. L. R., 3 Calc., 324

2 C. L. R., 123

I. L. R., 4 Mad., 157

I. L. R., 9 Calc., 136

See BENGAL ACT III OF 1870.

[13 B. L. R., 214, 215, note; 216, note; 217, note

See DECLARATORY DECREE, SUIT FOR—
SUITS CONCERNING DOCUMENTS.

[I. L. R., 1 Calc., 456

8 B. L. R., Ap., 26

See CASES UNDER JURISDICTION OF
REVENUE COURT.

See CASES UNDER PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION.

See PENSIONS ACT, 1871 . . . 1 Bom., 531

[I. L. R., 2 Bom., 89

I. L. R., 4 Bom., 432, 437, 443

I. L. R., 5 Bom., 406

I. L. R., 6 Bom., 209

I. L. R., 8 Calc., 422

See CASES UNDER RIGHT OF SUIT.

See SMALL CAUSE COURT, MOFUSSIL
—JURISDICTION—MILITARY MEN.

[2 B. L. R., S. N., 3, 7

1. ABUSE, DEFAMATION, AND SLANDER.

1. ——— **Abuse.**—*Suit for damages.*—A suit will lie in the Civil Court to recover damages for abuse. **KALI KUMAR MITTHER v. RAMGATI BHUTTACHARJI** . . . 6 B. L. R., Ap., 99
[16 W. R., 84, note

SEENATH MOOKERJEE v. KOMUL KURMOKAR
[16 W. R., 63

KANOO MUNDLE v. RAHMOOLLAH MUNDLE
[W. R., 1864, 269

GHOJAM HOSSEIN v. HUB GOVIND DOSS
[1 W. R., 19

TUKER v. KHOSHDEL BISWAS . . . 6 W. R., 151

OSSEEMOODDEEN v. FUTTEH MAHOMED
[7 W. R., 259

2. ——— *Suit for damages for verbal abuse.*—*Hindus in mofussil of Bombay.*—*Special damage.*—In a suit between Hindus in the Bombay mofussil damages may be recovered for mere verbal abuse, without proof of actual damage resulting therefrom to the plaintiff. **KASHIRAM VALAD KRISHNA v. BHADU BAPUJI**
[7 Bom., A. C., 17

3. ——— *Suit for damages.*—*Absence of special damage.*—An action will lie for damages on account of abuse received, even

JURISDICTION OF CIVIL COURT— continued.

1. ABUSE, DEFAMATION, AND SLANDER —continued.

Abuse—continued.

though plaintiff's professional position and gains are not injured thereby. *GOUB CHUNDER PUTEETUNDER v. CLAY* 8 W. R., 256

And see *NILMADHAB MOOKERJEE v. DOOKERAM KHOTTAH* 15 B. L. R., 161

WOOZEERUNNISSA BIRRE v. MAHOMED HOSSEIN [15 B. L. R., 166, note

HOSSEIN v. BAKIR ALI . W. R., 1864, 302

PHOOLBASSE KOOER v. PARJUN SINGH [12 W. R., 369

4. ———— *Action for abuse without proof of special damage.*—*Malicious defamation.*—The rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts of British India. *Semble.*—An action will not lie for vulgar abuse or hasty expressions; but for malicious or culpable oral defamation an action will lie. *PARVATHI v. MANNAR*

[I. L. R., 8 Mad., 175

5. ———— *Defamation.—Slander.—Defamation.*—*Verbal abuse.—Special damage.*—A suit to recover damages for verbal abuse of a gross character may be maintained without proof of consequential damage. *IBIN HOSSEIN v. HAIDAR*

[I. L. R., 12 Calc., 109

6. ———— *Slander.—Damages.—Consequential damage.*—A suit for damages for defamation of character involving loss of social position and injury to reputation will lie without proof of special damage. *Parvathi v. Mannar*, I. L. R., 8 Mad., 175; and *Srikant Rai v. Satcouri Saha*, 3 C. L. R., 181, followed. *TRAILOKYA NATH GHOSH v. CHUNDRA NATH DUTT*

[I. L. R., 12 Calc., 424

2. CASTE.

7. ———— *Suits as to caste questions.*—*Suit for restoration to caste and for damages and compensation for cost of restoration.*—A suit will lie for a declaration of right to restoration to caste, and for damages and compensation for cost of restoration to caste. When the defendant denies that he made any accusation, and it is proved that he did make one, and that it alone led to the excommunication of the plaintiff, the defendant should be allowed an opportunity of proving that the accusation was not false, before a decree for damages is passed against him. *GOPAL GURAIN v. GURAIN*

[7 W. R., 299

See *SUDHARAM PATAR v. SUDHARAM*

[3 B. L. R., A. C., 91

8. ———— *Bom. Reg. II of 1827, s. 1.*—*Suit for certain fees as mehtars.*—

JURISDICTION OF CIVIL COURT— continued.

2. CASTE—continued.

Suits as to caste questions—continued.

The plaintiffs sued to recover from the defendant certain fees alleged to be due to them, as mehtars of the caste, on the marriage of the daughter of the defendant. The defendant denied that the plaintiffs were his mehtars. *Held* that the question between the parties was a caste question with which the Courts were precluded from interfering by Bombay Regulation II of 1827, section 21. *MURAR DAYA v. NAGRIA GANESHIA* 6 Bom., A. C., 17

AMBU VALAD APPAJI v. KHANU SAKHARAM

[6 Bom., A. C., 19, note

9. ———— *Dispute as to right to gifts for services as Maha Brahmins.*—*Suit on award settling rights.*—The plaintiff and the defendants were Maha Brahmins and members of one family. Disputes having arisen as to the gifts made to them on account of their services, the matter was referred to arbitration, and the arbitrators awarded that each principal member of the family should, in turn, for periods of fifteen days, take, respectively, gifts made during such period. The plaintiff claimed, and sued to recover, a gift presented to some of the defendants during a period at which, under the terms of the award, he was entitled to the family gains. *Held* that the claim made in the suit differed *in toto* from a claim to a voluntary or a personal offering, and that it was entertainable in a Civil Court. *DOORGA PERSHAD v. BUDREE*

[6 N. W., 189

10. ———— *Suit for recovery of money value of holy cakes.*—*Question of religious character.*—The plaintiffs, members of the Tungalai sect of Brahmins, sued the defendants, the trustees of a temple at Conjeveram, for the recovery of the money value of certain holy cakes which they alleged they were entitled to receive from the defendants for commencing the recital of a Sanscrit verse and reading a certain Tamil chant, which offices they (plaintiffs) had the hereditary right of performing in the said temple. The Munsif decreed in favour of some of the plaintiffs. The defendants appealed. The Civil Judge dismissed the suit on the ground that the question incidentally involved was one of a religious character. *Held* that the Civil Judge was wrong; that the claim was for a specific pecuniary benefit, to which plaintiffs declared themselves entitled on condition of reciting certain hymns; and that undoubtedly the right to such benefits is a question which the Courts are bound to entertain. *NARASIMMA CHARIAH v. KRISTNA TATA CHARIAH*

[6 Mad., 449

11. ———— *Suit as to religious rights and ceremonies.*—*Suit by Temple Committee against poojaris.*—*Civil Procedure Code, 1877, s. 11.*—Suits as to religious rites or ceremonies, which involve no question of the right to property or to an office, are not suits of a civil nature, nor are they intended to be brought within the jurisdiction of the Civil Courts. A suit, therefore, by the plaintiffs,

JURISDICTION OF CIVIL COURT— continued.

2. CASTE—continued.

Suits as to caste questions—continued.

as members of a committee of management of a Hindu temple, to compel the hereditary priests of the temple to take out certain ornaments from the treasury of the managing committee, and to place them upon the image of the god, on such high days and holidays as might from time to time be appointed by the managing committee, and to obtain a declaration that the said ornaments, after they had been so taken out of the treasury, were in the custody of the priests, and that they were responsible for their safe custody, was held unsustainable. Section 11 of the Civil Procedure Code (Act X of 1877) introduces no new law, but merely declares the law as it has always been administered. *VASUDDEV v. VAMANJI*

[I. L. R., 5 Bom., 80]

12. ———— *Jurisdiction in matters of religion.—Cause of action.—Dancing-girl's offerings rejected by priest.—Disturbance of right of public worship.*—A dancing-girl's offerings to the idol having been rejected by the officiating priest of the temple, on the ground that she had been guilty of misconduct,—*Held* that, if the former had been wrongfully prevented from taking part in the public worship, she was entitled to relief from a Civil Court. *VENGAMUTHU v. PANDAVESWARA GURUKAL*

[I. L. R., 6 Mad., 151]

13. ———— *Suit to recover cooking-vessels.*—*Bom. Reg. II of 1827, s. 21.*—A claim by the members of one division of a caste against the members of the other division of that caste, for recovery of half of certain vessels belonging to the caste or their value, is a caste question within the meaning of section 21 of Regulation II of 1827, and cannot be made the subject-matter of a suit cognisable by a Civil Court. *GIRDEAR v. KALYA*

[I. L. R., 5 Bom., 83]

NEMCHAND v. SAVAICHAND. I. L. R., 84, note

14. ———— *Bom. Reg. II of 1827, s. 21.—Suit for fees appurtenant to the office of guru.*—A claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy privileges and honours at the hands of the members of the caste in virtue of that office is a caste question, and not cognisable by a Civil Court. The same rule applies where there are fees appurtenant to the office. The plaintiff belonged to the Mahar caste and sued to recover from the defendants certain fees which, he alleged, were appurtenant to the office of guru to the members of the Mahar caste living in a certain village. The defendants denied that the plaintiff was their guru. Both the lower Courts dismissed the suit, on the ground that it involved a caste question. The High Court, on second appeal, confirmed the decrees of the Courts below. *MURARI v. SUBA*

[I. L. R., 6 Bom., 725]

15. ———— *Suit for right to exclusive worship.*—*Bom. Reg. II of 1827, s. 21.—Right of suit.*—Four persons of the Chitpavan caste brought a suit in 1876, alleging that they and the mem-

JURISDICTION OF CIVIL COURT— continued.

2. CASTE—continued.

Suits as to caste questions—continued.

bers of their caste, in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein. They prayed for a declaration of their right and an injunction restraining the defendants from interfering with it. The defendants contended (*inter alia*) that the suit as constituted was not maintainable; that the question was a caste question within the meaning of section 21 of Regulation II of 1827, and not, therefore, within the cognisance of the Civil Courts; and that the suit was barred by the law of limitation. *Held* that this case was within the cognisance of the Civil Courts. The right of exclusive worship of an idol at a particular place set up by a caste is a civil right for adjudication by the Civil Court, and not a caste question. The meaning of section 26 of Regulation II of 1827 is that the internal economy of a caste is not to be interfered with by the Courts, not that no possible matter of litigation in which a question of caste usage, or right, or privilege, may arise can be taken cognisance of. *ANANDRAV BHIKAJI PHADKE v. SHANKAR DASI CHARYA*

[I. L. R., 7 Bom., 323]

3. COURT OF WARDS.

16. ———— *Suit against Court of Wards.—Superintendence over minor.*—No civil action will lie against the Court of Wards in respect of anything done by it regarding the person and education of any minor entrusted to its superintendence. *COLLECTOR OF BHEERHOOM v. MUNDAKINER DEBIA*

W. R., 1864, 332

The Court subsequently in this case declined to pass an order to stay the minor's removal under an order of the Board of Revenue directing such removal to the Wards' Institution in Calcutta, pending an appeal to the Privy Council, holding that it had no power to make such order. *COLLECTOR OF BHEERHOOM v. MUNDAKINER DEBEE*. I W. R., Mis., 7

And afterwards held that the Civil Court was competent to carry out an order that the Court of Wards was entitled to the custody of the minor. *MUNDAKINER DEBEE v. COLLECTOR OF BHEERHOOM*

[I W. R., Mis., 27]

17. ———— *Power of High Court.—Restraining Court of Wards from bestowing minor in marriage.*—The High Court cannot restrain the Court of Wards, whether acting with or without jurisdiction, from interference in the bestowal in marriage of a minor. *GUJARDEH PERSHAUD v. NABAIN SINGH*

5 W. R., Mis., 41

4. DUTIES OR CESSES.

18. ———— *Suit for fees from persons using market-place.*—*Held* that a claim to re-

JURISDICTION OF CIVIL COURT—
*continued.***4. DUTIES OR CASSES—continued.****Suit for fees from persons using market-place—continued.**

ceive fees as chowdhree from persons using a certain market-place, is not a right which can be enforced by the Courts of law. **BHINUK CHOWDHREE v. COLLECTOR OF JOUNPORE** . . . 2 **Agra, 271**

19. ———— Claim for dues for privilege of selling pān on hāt days.—Revenue Court.—A claim for a legal due or cess arising out of the privilege of selling pān on hāt days is cognisable in the Civil Court. **HURRISH CHUNDER KOOND v. GOPAL BAROOTE** . . . 3 **W. R., Act X, 158**

5. ENDOWMENT, MANAGER OF—

20. ———— Suit for removal of manager of charitable trust on ground of malversation.—Mad. Reg. VII of 1817.—A suit brought for the removal of defendant from the management of certain charitable trusts on the ground of malversation was dismissed by the Civil Judge, because he considered that the provisions of Regulation VII of 1817 required that application should first be made in such cases to the Board of Revenue. *Held*, on appeal, that the Civil Judge was wrong. Regulation VII of 1817 is clearly intended to be supplementary of existing remedies, and the Courts had unquestionably jurisdiction in such cases prior to its enactment. The expression in section 14 of the Regulation is not intended to limit the jurisdiction of the Courts to the cases contemplated in it, but rather to provide against the finality of erroneous orders that may be passed by the Board of Revenue under the Regulation. **PONNAMBALA MUDALIYAR v. VARAGUNA RAMA PANDIA CHINNATAMBIAR** [7 **Mad., 117**

6. FEES AND COLLECTIONS AT SHRINES.

21. ———— Suit for collections of a shrine.—Right of property in site.—Right of office.—A suit will lie for the collections of a shrine, either in right of property in the place or of lawful and established office attached to it. **SHEO SUHAYE DHAMEE v. BHOOREE MAHTOON** . . . 3 **W. R., 38**

22. ———— Suit for share of collections in return for spiritual instruction.—Held that a suit for a share of the collections made from "jujman in return for spiritual instruction" is not cognisable in the Civil Courts. **CHOOKNER LAL v. GOUREE SHUNKUR** . . . 1 **Agra, 84**

23. ———— Suit for share of offerings received by priest.—Contract to pay share of fees.—A suit will lie by one priest for a share of offerings received by another, if there be a contract to pay over such share. **JUGDANUND GOSAMEE v. KESSEE NUND GOSAMEE** . . . **W. R., 1864, 146**

But otherwise no suit will lie. **MUDDUN MOHUN GHORAL v. NUBORAM CHUCKERBUTTY** [2 **W. R., 69**

JURISDICTION OF CIVIL COURT—
*continued.***6. FEES AND COLLECTIONS AT SHRINES**
—continued.

24. ———— Suit for share of fees received by Hindu priest.—Contract to pay share of fees.—The plaintiffs sued the defendants in the Civil Court for a declaration of their right by contract to share in the ministrations at a certain ghāt, and to recover a sum of R75-9 as their share, under the contract, of moneys received by the defendants at that ghāt. *Held* the suit would lie. **MAGJU PANDARN v. RAMDYAL TEWARI**

[8 **B. L. R., 50: 15 W. R., 531****BECHARAM BANERJEE v. THAKURMANI DEBI**[8 **B. L. R., 53, note: 10 W. R., 114****CHUNI PANDEY v. BIRJO PANDEY**[[13 **C. L. R., 49**

25. ———— Suit for fees received by village priest.—Jujman.—Employment of another priest to perform service.—In the Presidency of Bombay a village priest can maintain a suit against a jujman who has employed another priest to perform ceremonies, and recover the amount of the fee which would properly be payable to him if he had been employed to perform such ceremonies. As a rule, the fee paid to the priest actually employed would afford a fair indication of the amount recoverable by the plaintiff under such circumstances, *Semble*.—A jujman ought to pay to the village or city priest, if not employed, a fee similar in amount to that which he (the jujman) pays to the priest actually employed, if the latter were not unreasonably large. **DINANATH ABAJI v. SADASHIV HARI MADHAVE** . . . 1 **L. R., 3 Bom., 9**

7. FERRIES.

26. ———— Suit for compensation for resumption of ferry by Government.—Civil Procedure Code, s. 1.—Beng. Reg. VI of 1819.—A suit for compensation for the loss sustained by reason of the resumption by Government under Regulation VI of 1819, of a ferry, is not cognisable by the Civil Courts. **COLLECTOR OF PUEBA v. ROMANATH TAGORE. MAGISTRATE OF MALDAH v. GOLSENUNNESSA**

[**B. L. R., Sup. Vol., 630: 7 W. R., 191**

27. ———— Invasion of rights of private ferry by Government.—Beng. Reg. VI of 1819, s. 3.—Section 3, Regulation VI of 1819, while it empowers the Government to invade private rights of ferry by the establishment of a public ferry, does not debar the Civil Court from giving relief in cases in which a Magistrate may, without the sanction of Government, have invaded a private right of ferry; nor does that Regulation prohibit Civil Courts from taking cognisance of matters connected with public ferries. **RAM GOBIND SINGH v. MAGISTRATE OF GHANESPORE** . . . 4 **N. W., 146**

JURISDICTION OF CIVIL COURT— continued.

8. FISHERY RIGHTS.

28. ——— Suit for damages and injunction to restrain illegal interference with plaintiff's right to fish in the sea.—*Low-water mark*.—The District Court may, when the defendants reside within its local jurisdiction, try a suit for damages for and restrain by injunction an alleged illegal disturbance of the plaintiff's right to fish and use fishing stakes and nets fixed in the sea below low-water mark and within three miles of it. *BABAN MAYAOHA v. NAGU SHRAVUCHA*

[I. L. R., 2 Bom., 19]

9. HÁT.

29. ——— Suit to determine right of person to hold market on certain days.—The Civil Courts have jurisdiction to determine whether or no a person has a right to hold a market on certain days. *THAKOOR SINGH v. SHEOPRESHAD OJHAR*

[5 N. W., 8]

10. MAGISTRATE'S ORDERS, INTERFERENCE WITH.

30. ——— Suit to set aside order of Magistrate opening a road.—The Civil Courts have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands. *KADIR MAHOMED v. MAHOMED SAFIR*

1 W. R., 277

31. ——— Interference of Magistrate with private right of way.—The interference of a Magistrate with a private right of way, being an act beyond his jurisdiction, may be remedied by suit in the Civil Courts. *SHAM DOSS v. BHOLA DOSS*

1 W. R., 324

32. ——— Order of Magistrate to remove encroachment.—A regular suit lies in the Civil Court from the proceedings of a Magistrate ordering the removal of an encroachment not treated as a local nuisance. *ANUND CHUNDER CHATTERJEE v. ROKHO TARUN CHATTERJEE*

2 W. R., 287

33. ——— Suit to set aside order of Magistrate declaring road public.—*Removal of obstruction to road*.—The Civil Courts have jurisdiction to entertain a suit, which, if successful, would have the effect of setting aside and rendering inoperative an order of a Magistrate declaring a road to be a public one, and directing the removal of bamboo posts across the road as an obstruction. *RAM SHODDY GHOSH v. JUTTADHAREE HALDAR*

[7 W. R., 95]

34. ——— Suit to set aside order of Magistrate removing obstruction.—*Criminal Procedure Code, 1861, s. 308*.—Where a Magistrate made an order for the removal of a shed as being an obstruction to a thoroughfare under section 308 of the Code of Criminal Procedure, and the owner of the shed on disobeying the order was fined under section 291 of the Penal Code,—*Held* that a suit would not lie in the Civil Court to establish the owner's right to keep up the shed. *BAKAS RAM SAHOO v. CHUMMUN RAM*

7 W. R., 11

JURISDICTION OF CIVIL COURT— continued.

10. MAGISTRATE'S ORDERS, INTERFERENCE WITH—continued.

35. ——— Suit for declaration of right to land encroached on by road.—A plaintiff is not debarred from suing in the Civil Courts for a declaration of his rights to land encroached upon by the widening of a road, on the ground that the order of the Magistrate directing the road to be kept up as widened is liable to be reversed as illegal. *AZEEZOOLLAH GAZER v. BUNK BEHAREE ROY*

7 W. R., 43

36. ——— Suit to set aside order of Magistrate as to private property.—*Criminal Procedure Code, 1861, s. 308*.—Section 308 of the Code of Criminal Procedure referred to nuisances in a thoroughfare or public place and had nothing to do with the interior of private houses, and therefore did not bar the jurisdiction of the Civil Courts in a suit brought to set aside an order of a Deputy Magistrate restricting some of the owners and occupiers of a house from the free use of their own portion of joint property. *ESHAN CHUNDER BANERJEE v. NUND COOMAR BANERJEE*

8 W. R., 230

37. ——— Obstructing public road.—*Criminal Procedure Code (Act XXV of 1861), s. 320*.—A Magistrate found, under section 320 of the Criminal Procedure Code, on a dispute between *R.* and *P.*, that the public had been in the habit of using a certain road over *P.*'s land, for carts, &c., and accordingly directed it to be opened (i.e., by removal of obstructions). *P.* brought a regular suit against *R.*, in which the issue was, whether the road was public or not: this was found in the negative, except as to a footpath; costs were apportioned, and the cart-way was ordered to be stopped. *R.* appealed on the merits, and *P.* filed a cross-objection: the first judgment was affirmed. On special appeal by *R.* as to the mode of dealing with the proofs,—*Held*, the finding of the Civil Court was beyond its competence, and the suit was not such as contemplated by section 320,—*viz.*, to test the right of "exclusive possession." *PYARI LAL v. ROOKE*

[8 B. L. R., A. C., 305: 12 W. R., 199]

Upholding on review, *ROOKE v. PYARI LAL*

[8 B. L. R., Ap., 48: 11 W. R., 434]

38. ——— Suit to restrain order of Magistrate as to nuisance.—*Suit to set aside order of Magistrate under s. 308, Code of Criminal Procedure (Act XXV of 1861)*.—*Nuisances*.—No suit will lie in a Civil Court to set aside an order duly made by a Magistrate under Chapter XX, section 308 of the Code of Criminal Procedure, relating to nuisances, or to restrain him from carrying such order into effect. *UJALAMAYI DAS v. CHANDRA KUMAR NEOGI*

4 B. L. R., F. B., 24

S. C. OJULMOYE DOSSEE v. CHUNDER KOOMAR NEOGI

12 W. R., F. B., 18

39. ——— Order of Magistrate as to right to use of water.—*Suit to set aside Magistrate's decision under s. 320, Criminal Procedure Code, 1861*.—A suit to get rid of the effect of an

JURISDICTION OF CIVIL COURT—
*continued.***10. MAGISTRATE'S ORDERS, INTERFERENCE**
WITH—continued.**Order of Magistrate as to right to use**
of water—continued.

order passed by a Deputy Magistrate under section 320, Code of Criminal Procedure, declaring a certain river to be a public thoroughfare, and to have it declared that plaintiffs are entitled with others to use the water of the said river by raising bunds or dams in the bed of the stream as heretofore, will not lie in the Civil Court, the only way in which the Deputy Magistrate's order can be got rid of in the Civil Court being by distinct proof of plaintiff's title to exclusive possession of the right of water claimed. **RAM KRISTO SINGAR v. KALOO** . 18 W. R., 284

40. ——— Suit for possession and damages after order of Magistrate for removal of hut.—Criminal Procedure Code (Act VIII of 1869), ss. 308-310, 311.—Removal of house by order of Magistrate.—Suit for possession and for damages.—A Magistrate issued an order under section 308 of Act VIII of 1869, calling upon A. to remove his hut as being an obstruction to a public highway. A. claimed a jury under section 310, the majority of whom found that the Magistrate's order was reasonable and proper. A. refused to obey the order, and his hut was removed under section 311. A. sued the Magistrate for possession of the land and for damages. *Held*, that such suit would not lie. **MEERCHOO CHUNDER SARGAR v. RAVENSHAW** [11 B. L. R., 9: 19 W. R., 345]

41. ——— Suit for possession after order of Criminal Court.—Suit to set aside order of Magistrate under s. 318, Criminal Procedure Code, 1861.—Suit for possession.—An award of a Magistrate under the Criminal Procedure Code, 1861, section 318, cannot be set aside by a decree of the Civil Court for possession; but is good to retain the party in whose favour it is passed in possession of the land, until the opposite party has established his right thereto by civil suit for exclusive possession. **KALSH NARAIN BOSH v. ANUND MOYEE GOOPTA** [21 W. R., 79]

42. ——— Suit for ejectment after dispossession of plaintiff under order of Magistrate.—An ejectment suit on the allegation that the defendants had, under colour of an order of the Magistrate, dispossessed the plaintiff of private property belonging to him, was held to be cognisable by the Civil Court. **DEB CHUNDER DOSS v. JOY CHUNDER PAL** . 22 W. R., 461

43. ——— Suit to cancel order of Magistrate.—Criminal Procedure Code, 1861, s. 62 (Act X of 1872), s. 518.—Right to hold market on certain days.—Any person is entitled to establish a market on his own land, and the owner of a neighbouring market has no right of suit for the loss which may ensue from the establishment of the new market. The legality of an order made by a Magistrate under section 62 of Act XXV of 1861 (section 518 of Act X of 1872), can be questioned in the

JURISDICTION OF CIVIL COURT—
*continued.***10. MAGISTRATE'S ORDERS, INTERFERENCE**
WITH—continued.**Suit to cancel order of Magistrate—con-**
tinued.

Civil Court. The Civil Courts are, however, bound to respect an order passed by a Magistrate when he is acting within his jurisdiction,—i.e., within the powers conferred on him by law; and if his proceedings show due diligence in satisfying himself of the necessity of the order, they cannot question his discretion. In a suit to establish a right to continue a market and to hold it on certain fixed days, by cancellation of the order of a Magistrate directing that it should not be held on those days for fear of riot, and of loss to the owner of another market, the plaintiff's right to hold the market on the days named in the plaint was decreed subject to the prohibition created by the order of the Magistrate. **KEDARNATH v. RUGHONATH** . 6 N. W., 104

44. ——— Right of way.—Criminal Procedure Code, 1872, ss. 521, 523.—Estoppel.—A Civil Court is not competent to set aside the order of a Magistrate made under section 521 of the Code of Criminal Procedure, on the ground that such order was made without jurisdiction, because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under section 521 by a Magistrate, try the question, whether the land which formed the subject of such order is private property, and not a thoroughfare or public place, as between the parties to such suit and those who claim under them. *Per* FIELD, J.—A person who, on receipt of an order made by a Magistrate under section 521 of the Code of Criminal Procedure, declaring the existence of a right of way over such person's lands, demands, under section 523 of the same Code, the appointment of a jury to try whether such order was reasonable, is not by such action estopped from afterwards bringing a suit in a Civil Court, seeking to establish his right to the exclusive enjoyment of the same lands. **MUTTY RAM SAHOO v. MOHI LALL ROY** . I. L. R., 6 Calc., 291: 7 C. L. R., 438

11. MARRIAGES.

45. ——— Suit to declare Hindu marriage invalid.—A suit for a declaration that an alleged Hindu marriage is invalid, is a suit of a civil nature, and will lie in the ordinary Civil Courts. **AUNJONA DAS v. PRAHLAD CHANDRA GHOSH** [6 B. L. R., 243: 14 W. R., 403]
Reversing S. C. . 14 W. R., 132

46. ——— A suit to have a Hindu marriage declared invalid, or otherwise, where no rights of property depend on the validity or invalidity of the marriage, cannot be maintained in the Civil Courts under Act VIII of 1859. **RAM-SARAN MITTHER v. RAKHAL DASS DUTT** [6 B. L. R., 244, note: 11 W. R., 412]

JURISDICTION OF CIVIL COURT— *continued.*

11. MARRIAGES—*continued.*

47. ——— Suit to enforce contract of marriage.—A suit to enforce a contract of marriage cannot be entertained in the Civil Courts of this country. *BRUGUN v. RUMJAN* . 24 W. R., 380

48. ——— Suit for breach of contract to give in marriage.—*Consideration.*—*Promise by brother to give sister in marriage.*—A certain amount of money had been paid by a Hindu to another in consideration of a promise by the latter that he would give his sister in marriage to the former. The girl's mother was alive. In a suit for recovery of the amount on the ground that the latter had failed to fulfil his promise,—*Held* that the suit would lie. *JOGESWAR CHAKRABATTI v. PANCH KAURI CHAKRABATTI*

[5 B. L. R., 395: 14 W. R., 154

See *RAM CHAND SEN v. AUDAITO SEN*

[I. L. R., 10 Cal., 1054

And *LALLUN MONEE, DOSSEE v. NOBIN MOHUN SINGH* . . . 25 W. R., 32

49. ——— Suit for restitution of conjugal rights.—A suit for restitution of conjugal rights by the husband against the wife will lie in the Civil Courts. *JHOTUN BIBEE v. AMBER CHUND* [1 Ind. Jur., N. S., 317: 5 W. R., 105

HUB SOOKHA v. POORAN . . . 2 Agra, 115

50. ——— *Supreme Court, Bombay, Ecclesiastical side.*—*Parris.*—The Supreme Court of Bombay, on its Ecclesiastical side, was declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsi wife against her husband. *ABDASSEE CUNSETYEE v. PEROEBOYE*

[4 W. R., P. C., 91: 6 Moore's I. A., 343

12. MUNICIPAL BODIES.

51. ——— Municipal body acting in excess of its jurisdiction.—*Control over Municipal bodies.*—Municipal as well as other public boards are included within the restraining and regulating jurisdiction of the Civil Courts of the country which are competent to inquire into and control the action of public bodies when they have acted in excess or contravention of the powers conferred upon them. *BRINDABUN CHUNDRE ROY v. MUNICIPAL COMMISSIONERS OF SERAMPORE* . 19 W. R., 309

52. ——— Suit to set aside order as to assessment of rates.—*Beng. Act III of 1864, s. 33.*—*Municipal Commissioners.*—*Appeal against assessment.*—A suit to set aside an order made on an appeal under section 33 of Bengal Act III of 1864 to the Municipal Commissioners against a rate assessment, and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way, and have exceeded their powers and acted contrary to the provisions of the Act, cannot be maintained in the Civil Courts. The decision of the Commissioners in such

JURISDICTION OF CIVIL COURT— *continued.*

12. MUNICIPAL BODIES—*continued.*

Suit to set aside order as to assessment of rates—*continued.*

an appeal is absolutely final. *MANESSUR DASS v. COLLECTOR AND MUNICIPAL COMMISSIONERS OF CHAPRA* . . . I. L. R., 1 Cal., 409

53. ——— Question of liability to pay tax.—*Suit to recover Municipal tax.*—*Tax levied under erroneous supposition.*—A suit was brought in the Court of the District Munsif of Guntur to recover the amount of a profession tax for 1876 levied by the Municipal Commissioners of Guntur on the plaintiff upon the supposition that he carried on business as an agent, while in fact he carried on no such business. The defendant pleaded that the Court had no jurisdiction. Upon reference,—*Held* by the High Court (*INNES, J.*, and *MUTTUSAMI AYYAR, J.*) that the Court had not jurisdiction to adjudicate on the matter in contest. *LEMAN v. Damodaraya*, I. L. R., 1 Mad., 158, distinguished. *KAMAYYA v. LEMAN* . . . I. L. R., 2 Mad., 37

13. OFFICES, RIGHT TO—

54. ——— Suit by hereditary purohit for declaration of right to officiate and for damages for loss of fees.—*Cause of action.*—The ancestor of the plaintiff was appointed purohit of the town of P. by Government, and obtained, prior to 1810, a mirasi inam as the emolument of the office. By an agreement made between the descendants of the original purohit the families in the town of P. were divided between them, and that of the defendants fell to the lot of the plaintiff. The plaintiff sued for a declaration of his right to officiate as the purohit of the defendants and for damages for loss of fees caused by the defendants employing another purohit. *Held* that the plaintiff had no cause of action. *RAMAKRISHNA v. RANGA* . . . I. L. R., 7 Mad., 424

55. ——— Suit to obtain declaration of right to perform religious ceremony.—*Quere.*—Whether the Courts in India have any jurisdiction to determine a question involving a mere declaration of a right to perform religious ceremonies. *NAMBOORY SEETAPATTY v. KANOO COLANOO PULLIA*

[7 W. R., P. C., 7: 3 Moore's I. A., 359

56. ——— Suit to establish rights of persons managing pagodas.—*Suit for damages for withdrawal of religious observances.*—The Civil Courts will recognise and enforce the rights of persons holding offices connected with the management and regulation of pagodas; and if the holder of such an office were entitled to remuneration for his services in the way of salary or otherwise, he would have a civil right entitling him to maintain a suit, if that remuneration were improperly withheld. A Hindu priest cannot sue in respect of the withholding of religious observances due to his sacred rank, but unconnected with any special office held by him, although the non-performance of such observances may have

JURISDICTION OF CIVIL COURT— *continued.*

13. OFFICES, RIGHT TO—*continued.*

Suit to establish rights of persons managing pagodas—*continued.*

caused him some ascertainable pecuniary loss. **STEIMAN SADA GOPA v. KRISTINA TATTACHARIYAR** [1 Mad., 301]

57. ——— Suit to establish right to honours of office in temple, and damages for invasion of right.—A suit to establish the right of the plaintiff to certain honours appertaining to an office in the temple, and to recover damages for an invasion of the right is one which it is competent to the Civil Courts to entertain. **ABOHAKAM SRINIVASA DIKSHATULU v. UDAYAGIRY ANANTHA CHARLU** 4 Mad., 349

58. ——— Suit for declaration of right to be priest and collect fees.—In a suit for “Huk Purohitee,”—*Held* that each “*jajman*” has a right to select his own priest, and no suit to enforce a right to be priest and collect dues as such would lie in the Civil Court. **BEHARNE LAL v. BABOO** [2 Agra, 80]

59. ——— Suit for declaration of right to eldership among patils.—*Act XI of 1843.*—In a suit brought for a declaration of right to the *vadilki* or eldership in a family of patils with a view to prove title to the *patilki* or office of *patil*.—*Held* that a Civil Court had no right to entertain such a claim in order to influence the controlling revenue officer, who had the power, in certain cases, to nominate, from among the sharers of a family of hereditary officers, a representative to discharge the duties of the hereditary office. **ABAJI BIN SANKROJI v. NILOJI BIN BALOJI** 2 Bom., 362: 2nd Ed., 342

60. ——— Suit for declaration of right to office of *patil*.—*Right to share in management of watan.*—Where the plaintiff sued to be declared entitled to the office of *Mulki Patil* in the village of Kotavery, as being the senior of his family, and alleged that the defendant, the actual incumbent of that office, had no right to share in the management of the *watan*, and had, in fact, until 1866, upon the death of the father of the plaintiff, never done so, it was held that the Civil Courts had jurisdiction to entertain the claim of the plaintiff. **Abaji bin Sankroji v. Nilaji bin Balaji**, 2 Bom., 362: 2nd Ed., 342, distinguished. **VITHU BIN MANKU v. AMRITA BIN JOTI** 7 Bom., A. C., 72

61. ——— *Act XI of 1843.*—Where a plaintiff sued for a declaration of his eligibility to the office of *patil*, if elected under the provisions of Act XI of 1843, he having been obliged to sue to establish his eligibility in consequence of the defendants’ persistent denial of the plaintiff’s claim to such eligibility, whereby the revenue authorities were induced to refuse to recognise it. *Held* that the suit was cognisable by a Civil Court. *Held*, also, that such a suit would lie even when the object of it was only to enable the plaintiff to influence the revenue authorities by showing that the Civil Court had declared him eligible for office as *patil*. **Abaji Sankro-**

JURISDICTION OF CIVIL COURT— *continued.*

13. OFFICES, RIGHT TO—*continued.*

Suit for declaration of right to office of *patil*—*continued.*

ji v. Nilaji Balaji, 2 Bom., 342; and *Yesaji Apaji v. Yesaji Mhaloji*, 8 Bom., A. C., 85, distinguished. **NINGANGAVDA PATIL v. SATYANGAVDA PATIL** [11 Bom., 232]

62. ——— Suit to establish right to officiate in proportion to shares held.—Where the plaintiff had two shares and the defendant one in a *patilki watan*, and the plaintiff brought a suit to establish his right to officiate twice as often as the defendant. *Quare*.—Whether the Civil Court had jurisdiction to entertain the suit. **BHAVANI SADASHIV v. BHAVANI MANAJI** 12 Bom., 232

63. ——— Suit for declaration of right to officiate as sole representative of a branch of *watandar* family.—*Bombay Hereditary Offices Act (III of 1874).*—From the date of the coming into force of the Bombay Hereditary Offices Act (III of 1874), it is not competent to the Civil Court to entertain a suit for a declaration of right to officiate as the sole representative of a branch of a *watandar* family, the Act constituting the Collector a Judge for this and other purposes of the Act. **KEANDU NARAYAN KULKARNI v. APAJI SADASHIV KULKARNI** [I. L. R., 2 Bom., 370]

64. ——— Suit for declaration of right to officiate as *watandar*.—*Bombay Hereditary Offices Act, III of 1874.*—Since Bombay Act III of 1874 came into force, no suit will lie in a Civil Court for a declaration that a person is eligible to officiate as a hereditary officer falling within the scope of that Act. Since that Act became law, none but representative *watandars* or their deputies or substitutes can officiate; and the duty of determining what persons shall be recognised as representative *watandars*, is vested in the Collector, whose proceeding is a judicial proceeding. **CHINTO ABaji KULKARNI v. LAKSHMIBAI** I. L. R., 2 Bom., 375

65. ——— *Bombay Hereditary Offices Act (III of 1874), s. 56.*—*Registration of watandar.*—A decree of the District Court at Sholapore made in 1863 declared the plaintiff to be a hereditary deputy *watandar* of a certain *deshpandi watan*, vested in the defendants as hereditary *watandar*, and as such deputy entitled to receive a certain sum annually out of the income of the *watan*. The plaintiff received moneys from time to time under his decree: he was not, however, subsequently to the decree registered and treated as a representative *watandar* under Bombay Act III of 1874, section 56. *Held* that, as plaintiff was not registered and treated as “a representative *watandar*” under Bombay Act III of 1874, although the decree of 1863 entitled him to be so registered, a Civil Court had no jurisdiction to register him as such a representative *watandar*, or to direct that he should be so registered by the Collector, and that any application for such registration should be made to the Collector. **GOPAL HANMANT v. SAKHARAM GOVIND** I. L. R., 4 Bom., 254

JURISDICTION OF CIVIL COURT— *continued.*

13. OFFICES, RIGHT TO—*continued.*

66. ——— Suit for share in emoluments of vatan.—*Bombay Hereditary Offices Act (III of 1874).*—*Act X of 1876.*—Neither Bombay Act III of 1874 nor Act X of 1876 contains any provision excluding the jurisdiction of Civil Courts in a suit brought to establish a share in the emoluments of a vatan which has ceased to be a service vatan. *MOHAYODIN v. CHHOTIBIBI* . I. L. R., 5 Bom., 578

67. ——— Suit for damages for wrongly continuing in office.—*Refusal to give up office.*—*Hereditary Offices Act, Bombay.*—*Act X of 1876, s. 4, cl. a, para. 2.*—Under Bombay Act III of 1874 the Civil Courts cannot entertain a suit which seeks to recover damages against the defendant for wrongly continuing in office as patil, instead of resigning in favour of the plaintiff, in obedience to a family custom which entitled the plaintiff to serve as patil every fourth year, whereby the plaintiff lost the emoluments of office. *Quære.*—Whether the claims excluded by Act X of 1876 as amended by Act XVI of 1877, section 1, are limited to claims against Government. *VASUDEV VITHAL SAMANT v. RAMCHANDRA SAMANT* . I. L. R., 6 Bom., 129

GANPATRAV v. RANGRAV

[I. L. R., 6 Bom., 133, note

GAVDAPA v. SHIRASANGVADA

[I. L. R., 6 Bom., 133, note

68. ——— Suit to rank as vatandar.—*Bombay Hereditary Offices Act (III of 1874).*—Under the Vatandars Act (Bombay Act III of 1874), as under the law antecedent to it, the Civil Court has jurisdiction to entertain a suit to be declared a vatandar. This jurisdiction rests on the simple denial of the plaintiff's right by the defendant irrespective of the pecuniary loss or other injury caused or likely to arise to the plaintiff by its infraction. When the list of vatandars is either undisputed, or settled by the decree of the Civil Court, the Collector derives jurisdiction under the Act to determine which of them shall be their representative. *RAMCHANDRA DABHALKAR v. ANANT SAT SHENVI* [I. L. R., 8 Bom., 25

69. ——— Suit for a share and entry of name in place of deceased vatandar.—*Bombay Hereditary Offices Act, No. III of 1874, s. 35.*—*Heir.*—*Adopted son.*—Section 35 of the Bombay Hereditary Offices Act (No. III of 1874) only contemplates the intervention of a Civil Court for the purpose of establishing the right of the claimant to be regarded as the adopted son of the deceased registered vatandar. When the claimant's suit is not limited to that object, but asks for a declaration of his share in the vatan and of his title to have his name entered in the vatan register, the suit is beyond the jurisdiction of the Civil Court. *BALKRISHNA CHIMNAJI v. BALAJI*

[I. L. R., 9 Bom., 25

70. ——— Suit to recover lands enfranchised.—*Hereditary Office.*—*Enfranchised*

JURISDICTION OF CIVIL COURT— *continued.*

13. OFFICES, RIGHT TO—*continued.*

Suit to recover lands enfranchised—*continued.*

inam.—*Mad. Reg. VI of 1831.*—*Madras Act IV of 1866.*—Where a claim to an hereditary village office, falling under Regulation VI of 1831, has been made and rejected by a Collector prior to the abolition of the office and the enfranchisement of the lands which formed the emoluments of the office, a Civil Court cannot take cognisance of a suit by the claimant to recover the lands from the incumbent to whom the lands have been granted by the Inam Commissioner. *KAMATCHI AMMAL v. AGILAND AMMAL* . I. L. R., 6 Mad., 334

71. ——— Suit to contest resumption of charitable inam.—*Mad. Reg. VII of 1817.*—*Act XX of 1863.*—A suit by the grantees to contest the right of the Government to resume an inam granted for the support of a chattram and for feeding Brahmins is cognisable by the Civil Courts. *SUBRAMANYA v. SECRETARY OF STATE FOR INDIA* [I. L. R., 6 Mad., 361

14. PARTNERSHIP.

72. ——— Suit for accounts and share of profits of partnership.—A suit between co-partners for a settlement of accounts and share of the profits is maintainable in the Civil Courts of India, which are Courts both of law and equity. *RAM NARAIN v. HERRA LALL* . 1 Agra, 226

73. ——— Suit for dissolution of partnership.—*Winding-up.*—*Contract Act, IX of 1872, s. 265.*—*Civil Procedure Code, ss. 11, 213, 215, sch. IV, Form No. 113.*—The ordinary Civil Courts have jurisdiction to try a suit for dissolution of a partnership, their jurisdiction to try such suits not being ousted by section 265 of the Contract Act, 1872. *RAMJIWAN MAL v. CHAND MAL* . I. L. R., 7 All., 227

15. PENALTIES.

74. ——— Imposing penalty without authority.—*Interference with rights of parties by way of penalty.*—Civil Courts have no power to interfere with the vested rights of parties merely by way of penalty, unless they are authorised to do so by positive legislative enactment. *RAM SAROY SINGH v. KOLDEEP SINGH* . 15 W. R., 80

See RAMNIDHY KOONDOD v. AJODHYARAM KHAN . 11 B. L. R., Ap., 37

16. POLITICAL OFFICERS.

75. ——— Act done by political officer.—*Interference with private rights.*—An act done by a political officer interfering with the private rights of parties can be questioned in the Civil Courts. *MUKOOND NARAIN DHO v. JOY COOMABEE DEBIA* . 1 W. R., 16

JURISDICTION OF CIVIL COURT—continued.**16. POLITICAL OFFICERS—continued.**

76. ——— Suit for damages against Political Agent at Court of Modhool.—*24 & 25 Vict., c. 104, s. 9.—Letters Patent, cl. 13.*—In a suit brought in the High Court at Bombay by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him in his executive capacity.—*Held*, even assuming there was a cause of action, the High Court had no jurisdiction to try it either under section 9, 24 and 25 Victoria, Cap. 104, as a Court of ordinary original civil jurisdiction, or in its extraordinary civil jurisdiction under section 13 of the Letters Patent. *INHABITANTS OF MAHALINGPORE v. ANDERSON* . . . **7 B. L. R., 452, note**

17. POTTAHS.

77. ——— Suit to compel grant of pottah.—*Landlord and tenant.—Maurasidars, right of.—Relinquishment of tenure.—Grant to maurasidars.*—Where the mirasidars of a village have relinquished their pottah for lands in the village, and thereby given occasion to the Revenue authorities to offer pottahs to others, a Civil Court cannot compel the Revenue authorities to grant a pottah to the maurasidars in preference to strangers, although the maurasidars may have a preferential claim under the Darkhast rules. *SUBBARAYA MUDALI v. COLLECTOR OF CHINGLEPUT* . **I. L. R., 6 Mad., 303**

78. ——— Suit for declaration of exclusive possession under pottah from Government.—*Allegation of wrong insertion of name in pottah.*—The plaintiff sued to have it declared that he was entitled to exclusive possession of certain land held under a pottah from the Government, alleging that the name of the defendant had been improperly inserted in such pottah. *Held* that the suit was properly brought in the Civil Court. *PURNAMAL DEKA KOHTA v. MAYARAM DEKA KOHTA* **[10 C. L. R., 201]**

18. PRIVACY, INVASION OF—

79. ——— Suit for injury caused by invasion of privacy.—The doctrine that the injury caused by invasion of one's privacy is a sentimental grievance, rather than a substantial injury for which relief can be claimed at law, has not received judicial sanction from the Indian tribunals, and is opposed to the feelings and unsuited to the habit of the natives of the country. *RAM BUKSH v. RAM SOOKH* . . . **3 Agra, 253**

80. ——— Invasion of privacy by opening windows.—The invasion of privacy by opening windows is not treated by the law as a wrong for which any remedy is given. *KOMATHI v. GURUNADA PILLAI* . . . **3 Mad., 141**

81. ——— Suit to have windows closed.—*Invasion of privacy of women.*—The defendants having opened certain windows and erected a

JURISDICTION OF CIVIL COURT—continued.**18. PRIVACY, INVASION OF—continued.**

Suit to have windows closed—continued.
verandah in their house which commanded a view of the plaintiffs' female apartments, the plaintiffs brought a suit against them to have the windows closed and the verandah removed. *Held* that no such suit was maintainable. *MAHOMED ABDUR RAHIM v. BIRJU SAHU*
[5 B. L. R., 676; 14 W. R., 103]

82. ——— Suit to have windows removed.—*Invasion of privacy of women.*—In a suit to compel the defendant to remove certain windows in his house which overlooked the apartments occupied by the females of the plaintiff's household.—*Held* that the plaintiff was not entitled to have them closed. *RAMLAL v. MAHESH BABOO*
[5 B. L. R., 677, note]

KALSH PERSHAD SHAHA v. RAM PERSHAD SHAHA
[18 W. R., 14]

83. ——— Suit to have doors closed.—*Invasion of privacy of women.*—A suit to close doors recently opened in the house of a neighbour, on the ground that such doors overlook the zenana or female apartments of the plaintiff, does not lie. *GOLAM ALI v. MAHOMED ZAHUR ALUM*
[6 B. L. R., Ap., 76]

See GIBBON v. ABDUR RAHMAN KHAN
[3 B. L. R., A. C., 411]

84. ——— Raising house to get extended range of vision.—*Invasion of privacy.*—Where a house-owner in a street changed the arrangement or construction of the upper part of his house, so that the alteration gave him a wider range of vision than before, but in a manner otherwise consistent with his rights of enjoyment, no legal right of suit is given to a neighbour living on the other side of the road complaining of loss of privacy. *JOOGUL LAL v. JASODA BIBEE* . **3 N. W., 311**

85. ——— Opening new doors or windows.—*Usage of Gujarat.—Overlooking neighbour's house.*—*Held* that, in accordance with the usage of Gujarat, an invasion of privacy is an actionable wrong, and that a man may not open new doors or windows in his house, or make any new apertures, or enlarge old ones, in a way which will enable him to overlook those portions of his neighbour's premises which are ordinarily secluded from observation, and so intrude upon his privacy. The doctrine of English law, which has been followed by the High Court of Madras, is different. *MANI SHANKAR HARGOVAN v. TRIKAM NARSI* . **5 Bom., A. C., 42**

86. ——— *Usage of Gujarat.*—When in Gujarat a householder's privacy is invaded by the opening of new doors and windows in his neighbour's house, his right of action is not altered by the fact that a public road runs between the dominant and the servient tenements. *Mani Shankar Hargovan v. Trikam Narsi*, **5 Bom., A. C., 42**, followed. *KUTARI PREMCHAND v. BAI JAYER* . . . **6 Bom., A. C., 143**

JURISDICTION OF CIVIL COURT— *continued.*

18. PRIVACY, INVASION OF—*continued.*

87. ——— **Right to have window opening on to neighbouring house.—*Right of privacy.***—Where the plaintiff opened a new window in his house at Dharwar, which rendered the defendant's house less private than before,—*Held* that the plaintiff was not guilty of any tortious act, and should not be debarred from improving his own house, though the effect might be, to some extent, prejudicial to his neighbour. To establish such an exceptional privilege, as is customary in this respect in the towns of Gujerat, evidence of the most satisfactory character is necessary. **SRINIVAS UDPIRAY v. REID** **9 Bom., 266**

88. ——— ***View of open courtyard.***—Where a window opened by the defendant commanded a view, not of the plaintiff's private apartments, but of an open courtyard outside his house, it was held that there had been no invasion of the plaintiff's privacy which would entitle him to have the window closed, according to the custom legally recognised in Gujerat. **KESHAV HARKHA v. GANPAT HIRACHAND** **8 Bom., A. C., 87**

19. PUBLIC WAYS, OBSTRUCTIONS OF—

89. ——— **Erection of building in public road.—*Nuisance.***—A person aggrieved by the erection of a building in a public thoroughfare, or on the waste land of a town or village, may institute a suit in a Civil Court for its removal, instead of preferring a complaint to the Magistrate. **JINA RANOD v. JODHA GHELLA** **1 Bom., 1**

90. ——— **Suit for closing a new road and opening old one.**—In a suit for closing a new road opened by the defendant through the land of the plaintiff, and for opening an old road which had been closed by the defendants,—*Held, per MARKBY, J.*, that the question of opening and closing a public road belongs to the Criminal Court. The Civil Court had no jurisdiction to entertain the suit. **HIRA CHAND BANERJEE v. SHAMA CHARAN CHATTERJEE**

[**3 B. L. R., A. C., 351; 12 W. R., 275**

91. ——— **Obstructing public road, Suit for.—*Special inconvenience.—Dedication to public.***—A suit will not lie for obstructing a public road without showing any particular inconvenience to the plaintiff in consequence of such obstruction. A donor does not, by dedicating a thing to the public, necessarily become a guardian of the public *quoad* that thing. **BARODA PRASAD MOSTAFI v. GORA CHAND MOSTAFI**

[**3 B. L. R., A. C., 295; 12 W. R., 160**

92. ——— **No suit lies for obstructing a public road, unless the plaintiff can show that he has suffered particular inconvenience from such obstruction.** **PARBATI CHARAN MUKHOPADHYA v. KALINATH MUKHOPADHYA**

[**4 B. L. R., Ap., 73**

JURISDICTION OF CIVIL COURT— *continued.*

19. PUBLIC WAYS, OBSTRUCTIONS OF—*continued.*

93. ——— **Obstructing public road.—*Suit for declaration of right of way.—Special damage.***—A suit for declaration of right of way by a public road will not lie, where there is no allegation of special injury or inconvenience to the plaintiff. **RAMTARAK KARATI v. DINANATH MANDAL**

[**7 B. L. R., 184**

RAJ LUKHEE DEBIA v. CHUNDER KANT CHOWDHRY **14 W. R., 173**

BHAGHERUTH BISHEE v. GOKUL CHUNDER MUNDUL **18 W. R., 58**

BHUGHERUTH DASS KOYBURTO v. CHUNDER CHURN KOYBURTO **22 W. R., 463**

94. ——— ***Criminal Procedure Code, 1872, s. 521.***—No suit for obstructing a public thoroughfare can be maintained in a Civil Court without proof of special injury. **KARIM BAKSH v. BUDHA** **1 L. R., 1 All., 249**

95. ——— ***Special damage.—Abatement of nuisance.—Criminal Procedure Code, X of 1872, s. 518.—Damages, Right to.***—Where special damage is caused to any person by an obstruction placed upon a public thoroughfare, he is entitled to bring an action in the Civil Court for the purpose of having the nuisance abated, notwithstanding the provisions of section 518 and the following sections of the Criminal Procedure Code for summary proceedings before a Magistrate, and notwithstanding that he may be entitled to damages. **RAJ KOOMAR SINGH v. SAHEBZADA ROY** **1 L. R., 3 Cal., 20**

20. REGISTRATION OF TENURES.

96. ——— **Suit to compel registration of tenure.—*Suit to compel Collector to register and assess land transferred in accordance with Mad. Reg. XXV of 1802.***—The Civil Courts have jurisdiction to entertain a suit brought by the alienee to compel the Collector to register and sub-assess a portion of a zemindari transferred in accordance with the provisions of Madras Regulation XXV of 1802. **PONNUSAMY TEVAR v. COLLECTOR OF MADURA**

[**3 Mad., 35**

97. ——— **Suit to compel Collector to register.—*Chota Nagpore.—Beng. Regs. II of 1793, s. 9, and XIII of 1833.***—A suit will not lie to compel a Collector in Chota Nagpore to register a party as proprietor of an estate. **LALLA BISSEN PRESHAD v. COLLECTOR OF HAZARIBAGH**

[**13 W. R., 397**

98. ——— **Right of transferee to have name registered.—*Act X of 1859, s. 27.***—The right given by section 27 of Act X of 1859 to the transferee of a permanent transferable interest in land to have his name registered in the sherista of the zemindar in the place of that of his vendor, is a right of a civil nature; and therefore the Civil Courts have cognisance of all suits necessary for the purpose of

JURISDICTION OF CIVIL COURT—continued.**20. REGISTRATION OF TENURES—continued.****Right of transferee to have name registered—continued.**

enforcing such right. The jurisdiction of the Collector is not exclusive, but concurrent. **MADHUB CHUNDER PAL v. HILLS**

[1 B. L. R., A. C., 175; 10 W. R., 197]

99. ——— Right of claimant to have name registered.—Jurisdiction of Revenue Courts.—Question of title.—Registration of names.—Declaratory decree, Suit for.—It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts. It is the duty of the latter in suits brought for declaration of a right to registration to declare the rights of parties in order that the revenue authorities may be duly certified as to the persons whom they ought to register. **JUGUT SHOBHUN CHUNDER alias DOOLAL CHUNDER DEHINGUR GOSSAMY v. BINAUD CHUNDER alias SODA SHOBHUN CHUNDER DEHINGUR GOSSAMY**

[1 L. R., 9 Calo., 925]

100. ——— Land in Assam.—Suit for declaration of title to.—Jurisdiction of Civil Court.—A person claiming a right to rent-bearing land in Assam, held under a pottah from Government in the names of the persons against whom he claims, is entitled to sue in the Civil Court for a declaration of his title and right to have his name registered as co-owner in the Collectorate; and the Civil Court has jurisdiction to determine such suits, although the Collector has not been first applied to; but should not pass any order against the Collector in any suit to which he is not a party, but merely declare what the plaintiff's rights are. **BEJOY KROT v. GORIA KROT**

[1 L. R., 7 Calo., 437; 9 C. I. R., 213]

KALINDRI DABIA v. KOMOLOKANTO SURMA

[1 L. R., 7 Calo., 439, note]

HOOTABOO RAYAH v. LOOM RAYAH

[1 L. R., 7 Calo., 440, note; 7 C. I. R., 221]

101. ——— Power to reverse order for registration of name.—Land Registration Act (Bengal Act VII of 1876), ss. 52, 55.—Declaratory decree.—Possession, Confirmation of.—The Civil Courts have no jurisdiction to make a decree reversing an order for the registration of the name of any person made by a registering officer under Bengal Act VII of 1876. All that the Civil Courts can do is to declare the title of an individual, or to give him a decree for possession, and then the registration officers would, as a matter of course, proceed to amend their registers in accordance with the rights of the parties as settled by the Civil Courts. **OMRUNISSA BIBEE v. DILAWAR ALLY KHAN** . 1 L. R., 10 Calo., 350

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.W. PROVINCES.**102. ——— Suits for immediate possession.—Jurisdiction of Revenue Court.—Held****JURISDICTION OF CIVIL COURT—continued.****21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.W. PROVINCES—continued.****Suits for immediate possession—continued.**

that the Civil and the Revenue Courts have concurrent jurisdiction to hear and decide suits in regard to immediate possession. **EX PARTE NAGOVA KAM JAKAN GAUDA** . . . 3 Bom., A. C., 108

103. ——— Suit to rectify assessment of land revenue.—Bom. Reg. XVII of 1827.—The jurisdiction of Civil Courts in questions of assessment, as that jurisdiction stood under Regulation XVII of 1827, Chapter I, was confined to cases where the contention was that there is a right on the part of the occupant of the assessed land in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved. **GOVERNMENT OF BOMBAY v. SUNDARJI SAVRAM** . . . 12 Bom., Ap., 275

See also **GULAM MOHIDIN v. COLLECTOR OF AHMEDABAD** . . . 12 Bom., Ap., 276

VYAKUNTA BAPUJI v. GOVERNMENT OF BOMBAY

[12 Bom., Ap., 1]

And **GOVERNMENT OF BOMBAY v. HARIBHAI MONBHAI** . . . 12 Bom., Ap., 225

104. ——— Suit to recover possession of inam lands.—Bom. Act III of 1863, s. 3.—Bombay Act III of 1863, section 3, deprives the Civil Courts of jurisdiction in respect of all claims against Government on account of inams, in other words, claims referring to total or partial exemption from the payment of Government revenue, but it does not deprive the Civil Courts of jurisdiction in respect of claims to recover possession of inam lands. **SHIDMAL GURA v. ANDERSON** . . . 11 Bom., 39

105. ——— Removal or destruction of boundaries.—Bom. Act II of 1866.—Encroachment.—Where boundaries are removed or destroyed and when new ones are to be fixed, or where a question arises where boundaries run, the case falls under section 3 of Bombay Act XI of 1866; but where the question between the parties is whether there has been an encroachment by the defendant on the lands of the plaintiff the Civil Courts have jurisdiction. **BAPUJI BALVANT v. RAGHUNATH VITHAL**

[6 Bom., A. C., 72]

106. ——— Suit for amount improperly levied as rent.—Broach Talookdars' Relief Act, XV of 1871, s. 23.—Personal liability of manager of thakoor.—The Broach Talookdars' Relief Act, XV of 1871, does not bar the cognisance, by the Civil Courts, of a suit to recover the amount improperly levied as rent of rent-free land, and to obtain a declaration that such land is not subject to the payment of rent, albeit that, under section 23 of the Act, the manager of a thakoor's estate is exempt from personal liability for anything done by him *bona fide* pursuant to the Act, and is not subject to an action for damages on account of the attachment of the

JURISDICTION OF CIVIL COURT— continued.

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—continued.

Suit for amount improperly levied as rent—continued.

plaintiff's property. *ASMAL SALEMAN v. COLLECTOR OF BROACH* . . . I. L. R., 5 Bom., 135

107. ——— *Enfranchisement by Inam Commissioner.*—Civil Courts have jurisdiction to enquire into the title of lands enfranchised by the Inam Commissioner, and the sanad granted by the Commissioner may be annulled, without destroying its effect as an enfranchisement of the inam. In a suit by the adopted son of the late possessor of an inam to recover it,—*Held* that the Court had jurisdiction, notwithstanding the production by the defendant of title-deeds showing that the land had been granted to the defendant by the Inam Commissioner. *CHERUKURI VENKANNA v. MANTRAVATHI LAKSHMI NARAYANA SASTRULU* . . . 2 Mad., 327

108. ——— *Effect of certificate of Inam Commissioner.*—*Evidence of title.*—The certificate of the Inam Commissioner does not afford conclusive evidence of the title of the person, nor is his decision one over which the Civil Courts have no jurisdiction. *VISSAPPA v. RAMAJOGI* [2 Mad., 341

109. ——— *Order for execution in suit tried by Village Munsif.*—*Corruption or partiality of Munsif.*—*Mad. Reg. IV of 1816.*—The Civil Court has no jurisdiction under section 29 of Regulation IV of 1816 to make an order for the execution of a decree in a suit tried before a Village Munsif. The section only applies where a Village Munsif has been guilty of corruption or partiality in the decision of a cause tried by him. *NARAYANASAMY NAIKAR v. VELU PILLAY* . . . 4 Mad., 188

110. ——— *Suit for produce of land held on service tenure.*—*Mad. Reg. VI of 1831.*—Regulation VI of 1831 prohibits the Civil Courts from taking cognisance of a suit brought to recover the value of three years' produce of certain land (held by the plaintiff on service inam tenure), on the ground that the defendant, who held a lease from the plaintiff, wrongfully refused to give up possession on the expiration of his lease, and continued to hold the land and to deprive the plaintiff of the possession and enjoyment thereof. *Bassappa v. Koorooappa, Mad., S. D., 1858, p. 268*, distinguished. *BASAPPAH v. YENKATAPPA* . . . 4 Mad., 70

111. ——— *Appeal from order of Collector.*—*Mad. Act VIII of 1866, ss. 41, 43.*—Certain landholders applied to the Collector for warrants to be put into possession of lands under section 41 of Madras Act VIII of 1866. The warrants were issued, but certain ryots appealed under section 43 by presenting ordinary petitions. In disposing of these petitions, the Collector referred certain questions to arbitrators named by the parties, and then made an order in accordance with the award. The

JURISDICTION OF CIVIL COURT— continued.

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—continued.

Appeal from order of Collector—continued

Civil Court heard an appeal from the order. *Held* that the Civil Court had no jurisdiction to hear the appeal. *MADAI THALAVAY KUMMARASAMY MUDALIYAR v. NALLAKANNU TEVAN* . . . 5 Mad., 289

112. ——— *Suits for possession of land.*—*Land in Jhansi.*—*Act XVIII of 1867.*—Since Act XVIII of 1867 came into force, suits for possession of land are cognisable in the Civil, and not in the Revenue Courts of the Jhansi Division. *HEERA LAL v. RUDHOUL* . . . 2 N. W., 85

113. ——— *Suit for recovery of proceeds of sale in execution of decree for rent.*—*Decree of Revenue Court.*—Where plaintiff held a decree of a Munsif's Court against certain persons who were cultivators, and issued an attachment against their property, and their zemindar subsequently obtained an order for the execution of a decree of a Revenue Court for rent against the same parties, and also attached the same property, which was eventually sold to satisfy both decrees, although the proceeds were handed over to the zemindar only,—*Held* that a suit by the plaintiff against the zemindar for the recovery of such proceeds was cognisable in the Civil Courts. *GOKOOL DASS v. GUNGESHEE SINGH* . . . 3 N. W., 164

See GOGARAM v. KARTICK CHUNDER SINGH
[I. L. R., Sup. Vol., 1002
S. C. 9 W. R., 514

114. ——— *Suit for specific performance of condition of lease.*—A suit to obtain specific performance of the conditions of a lease, and not to cancel the lease or eject the tenant from his holding, is cognisable by a Civil Court, and not by the Revenue Court. *ABDOOL GHUNNEE v. GOODREE RAI* . . . 2 Agra, Pt. II, 192

115. ——— *Suit for declaration of title as holder of revenue-paying estate and for ejectment.*—A suit for a declaration that the defendant holds an estate paying revenue to Government as a manager subject to ejectment at will, and not under a perpetual lease at a fixed rate of rent, and for the defendant's ejectment, is one cognisable by the Civil Courts. *MAHAMMAD ABU JAFAR v. WALI MAHAMMAD* . . . I. L. R., 3 All., 81

116. ——— *Suit for meane profits.*—The jurisdiction in the case of a claim to meane profits is in the Civil and not the Revenue Court. *SHUNKUR LALL v. RAM LALL*
[1 N. W., 177; Ed. 1873, 256

117. ——— *Suit to eject ex-proprietary tenant as trespasser and recover meane profits.*—A suit to eject from land as a trespasser, a person who has entered upon such land asserting his claim to the status of an ex-proprietary tenant, and to recover from him meane profits, is a suit

JURISDICTION OF CIVIL COURT— *continued.*

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—*continued.*

Suit to eject ex-proprietary tenant as trespasser and recover mesne profits—*continued.*

cognisable by the Civil Court. **BAKHAT RAM v. WAZIR ALI** . . . **I. L. R., 1 All, 448**

118. ——— Suit to have land restored to original condition after illegal planting of trees by tenant.—Where the suit was not for ejectment under Act X, but the zemindar claimed to have the land restored to its original condition by the removal of trees illegally planted by the cultivator,—*Held* that such suit was cognisable by the Civil Court, and not by the Revenue Court. **JHONA SINGH v. NEAZ BEGUM**

[2 Agra, Pt. II, 183

119. ——— Suit by assignee of interest for share of land.—In a solahnamah between B., the assignor of the plaintiff, and the defendant and a third party, it was agreed that as B. held less seer land than the other two persons, there should be an equal division between the shareholders within a certain time, and in case no division took place, that B. should be entitled to damages. The plaintiff sued to recover possession of certain sir land and a certain sum as damages for the breach of the contract. *Held* that, if the suit was regarded as one brought by a proprietor, who had purchased a certain share, the suit was not cognisable in the Civil Courts. **JURBUNDHUN SINGH v. SHMORAJ SINGH**

[5 N. W., 184

120. ——— Suit for possession of land under kabuliat.—*Landholder and tenant.—Relinquishment by occupancy-tenant of his holding.—Effect of relinquishment on co-sharers.—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 8, 9, 95.—Specific performance of contract.*—K., the occupancy-tenant of certain land, to whom the landholder had granted a lease thereof for a certain term, gave the latter a kabuliat containing the following clause: "On the expiration of the term the landholder shall have the power to keep the said land under my cultivation at the former rent, or at an enhanced rent as may be agreed upon between the parties, or he may make over the land to some other cultivator at an enhanced rent fixed by himself." K. died before the expiration of the lease, and was succeeded by his sons. On the expiration of the lease the landholder sued K.'s sons in the Civil Court for possession of the land, claiming under the kabuliat. *Per MAHMOOD, J.*—That, inasmuch as the plaintiff did not seek the determination of the class of the defendants' tenure, and the suit could not be regarded as one for ejectment of a tenant in the manner provided by the Rent Act, but was one for specific performance of a contract, based on the kabuliat, according to the terms of which the plaintiff was entitled, it was alleged, to oust the defendants, the suit was cognisable in the Civil Court.

JURISDICTION OF CIVIL COURT— *continued.*

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—*continued.*

Suit for possession of land under kabuliat—*continued.*

Per curiam.—That whatever might have been the effect of the kabuliat as regards K. it could not defeat the rights of his sons, who had become by inheritance co-sharers in the right of occupancy or had succeeded thereto under the provisions of the Rent Act. **LALJI v. NARAH** . . . **I. L. R., 5 All, 108**

121. ——— Suit for declaration that land is plaintiff's sir and defendant a lessee.—*Landholder and tenant.*—A zemindar claimed a declaration that certain land was his sir and that the defendants were in possession thereof as his lessees. The defendants resisted the claim on the ground that they were tenants of the land at fixed rates, and not lessees of it as the plaintiff's sir. *Held* that the suit raised the question whether the land was sir, in respect of which no occupancy-rights could be created except by contract, and whether the defendants were the plaintiff's lessees, and that this was a question purely of contract, and one which was cognisable in the Civil Courts. **KAULESHAR PANDAY v. GIRDHARI SINGH** . . . **I. L. R., 7 All, 338**

122. ——— Suit for possession against trespassers.—*N.-W. P. Rent Act, 1873, XVIII, s. 9.—Sale of occupancy-rights with zemindar's consent.—Acceptance of rent by zemindar from vendees.*—Under a deed dated in 1879, the occupancy-tenants of land in a village sold their occupancy-rights, and the zemindars instituted a suit for a declaration that the sale-deed was invalid under section 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zemindars had consented to the sale to the vendees, and received from them arrears of rent due on the holding by the vendors, and had recognised them as tenants. *Held, per MAHMOOD, J. (OLDFIELD, J., dissenting),* that the zemindars having accepted the vendees as tenants and taken rent from them, a tenancy was thereby constituted under the Rent Law; that the vendees were therefore not trespassers; and that therefore the question as to ejectment did not fall within the jurisdiction of the Civil Court. **DURGA v. JHINGURI** [I. L. R., 7 All, 511

Upheld on appeal under the Letters Patent in **JHINGURI TEWARI v. DURGA**

[I. L. R., 7 All, 878

Reversing the decision of **OLDFIELD, J.**

123. ——— N.-W. P. Rent Act, XVIII of 1873, ss. 36, 39.—S. caused a notice of ejectment to be served upon K. in respect of certain land, alleging that he held the same by virtue of a lease which had expired. K. contested his liability to be ejected under section 39, denying that he held the land by virtue of such lease and alleging that

JURISDICTION OF CIVIL COURT—
*continued.***21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—**
*continued.***Suit for possession against trespassers—**
continued.

he held it under a right of occupancy. The Revenue Court decided that *K.* held the land under a right of occupancy and not under such lease. *S.* thereupon sued *K.* in the Civil Court, claiming possession of such land, on the allegation that *K.* was a trespasser wrongfully retaining possession thereof after the expiration of his lease. *Held* that the suit was cognisable in the Civil Courts. *SUKHDAIK MISHR v. KARIM CHAUDHRI*. I. L. R., 3 All., 521

124. ——— Suit for demolition of a well.—*Landlord and tenant.—N.-W. P. Rent Act, XVIII of 1873, s. 44.*—A suit in which the matter in dispute is whether a landholder is entitled to demolish a well constructed by a tenant is not one cognisable in the Revenue Courts but in the Civil Courts. Section 44 of Act XVIII of 1873 implicitly authorises tenants of all classes to construct wells for the improvement of the land held by them, and therefore, where a well constructed by a tenant benefits the land held by him, a suit by the landholder in the Civil Court for its demolition as having been made without his consent is not maintainable. *RAJ BAHADUR v. BIRMEHA SINGH*. I. L. R., 3 All., 86

125. ——— Suit by assignee of rent against tenant.—*N.-W. P. Rent Act, XII of 1881, s. 93 (d).*—A suit by the person, to whom a landholder has assigned rents payable to him by tenants, for the recovery of the money so assigned, is a suit cognisable in the Civil Courts and not in the Revenue. *GANGA PRASAD v. CHANDRAWATI*. [I. L. R., 7 All., 256

126. ——— Suit for share of revenue paid.—*Jurisdiction of Revenue Court.—N.-W. P. Rent Act, XVIII of 1873, s. 93 (g).*—On the death of *K.* a dispute arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874, *N.*, who was not one of her heirs, and who was not a shareholder of such village, was recorded in the revenue register as lambardar in respect of her share, and was so recorded until February 1878, when his name was expunged, and the name of *B.*, who was one of the heirs, was recorded as the proprietor of such share. *N.* subsequently sued *B.* to recover Rs. 70-13-4, being the amount which he had paid on account of revenue in respect of such share during the period between January 1874 and February 1878, instituting such suit in a Civil Court (Munsif). *Held* that the suit was not one cognisable in a Revenue Court under section 93 (g) of Act XVIII of 1873, but one cognisable in a Civil Court. *NATH PRASAD v. BAIJNATH*. [I. L. R., 3 All., 66

127. ——— Suit for declaration of proprietary right, and right to demand rent.—*N.-W. P. Rent Act (Act XVIII of 1873), ss. 93, 95.*—The plaintiffs in this suit claimed a declaration of

JURISDICTION OF CIVIL COURT—
*continued.***21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—**
*continued.***Suit for declaration of proprietary right, and right to demand rent—**
continued.

their proprietary right in respect of certain lands and possession of the lands, alleging that the defendants were their tenants, and liable to pay rent for the lands. The defendants, while admitting the proprietary right of the plaintiffs, alleged that they paid the revenue assessed on the lands, that they paid no rent, and that the plaintiffs were not entitled to rent, and they styled themselves tenants at fixed rates. *Held*, on appeal, that, as the defendants substantially denied the proprietary title of the plaintiffs and set up a title of their own, the claim of the plaintiffs for a declaration of their proprietary right and of their right to demand rent was a matter which the Civil Court must decide, leaving the plaintiffs to sue in the Revenue Court to eject the defendants, and to recover rent, if the position of the defendants as tenants was established. *KANAKIA v. RAM KISHEN*. [I. L. R., 2 All., 439

128. ——— Suit by tenant against sub-tenant for ejectment.—*“Landholder” and “tenant.”—Act XII of 1881 (N.-W. P. Rent Act), Ch. II (B.), ss. 93, 95, 148.*—The plaintiffs, alleging that they were the occupancy-tenants of certain land, that they had sub-let its cultivation to the defendants, and that the defendant had denied their title and set up a claim to be the tenant-in-chief under the zemindar, sued in the Civil Court to establish the right they claimed to the land and for possession of the land. *Held* that the cognisance of the suit in the Civil Court was not barred by sections 93 or 95 of the N.-W. P. Rent Act. *RIBBAN v. PARTAP SINGH*. I. L. R., 6 All., 81

129. ——— Suit for the removal of trees.—*Landholder and tenant.—Civil and Revenue Courts.—N.-W. P. Rent Act (XII of 1881), s. 93 (b).*—*Held* that a suit by a landholder for the removal of certain trees planted by the defendants upon land held by them as the plaintiff's occupancy-tenants was cognisable by the Civil and not by the Revenue Court. *Deodat Tiwari v. Gopi Mier, Weekly Notes, All., 1882, p. 102*, referred to. *GANGADHAR v. ZAHURRIYA*. I. L. R., 8 All., 446

130. ——— Suit for possession and mesne profits alleging tenancy and dispossession.—*Act XVIII of 1873, s. 95.*—The plaintiffs sued to recover possession of certain land on the averment that they were occupancy tenants and the defendants had forcibly dispossessed them, and also to recover mesne profits. The defendants set up a rival title, but were found by the Court of first instance, which decreed the claim, to be the plaintiff's shikmis. The decree of the lower Appellate Court dismissing the suit as one of which the Civil Courts were precluded from taking cognisance by section 95, Act XVIII of 1873, was reversed, and the suit remanded to it for disposal on the merits. *MATA PARSHAD v. JANAKI*. I. L. R., 7 N. W., 296

JURISDICTION OF CIVIL COURT— continued.

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—*con-* *tinued.*

181. ——— Suit for possession alleging tenancy and dispossession.—*N.-W. P. Rent Act XVIII of 1873, s. 95.*—The plaintiff sued the defendants (who were not his landlords) to recover possession of certain land on the averment that he held the same with a right of occupancy and had been forcibly dispossessed by them, and also to recover mesne profits. The defendants denied the alleged ejectment and alleged that they were in possession of the land under a lease from the zemindar. It was held that the suit was one of which the Civil Courts could take cognisance. **RAGHOBAR MISSEER v. SITAL** . . . **7 N. W., 228**

182. ——— Suit for possession after being dispossessed unlawfully.—*N.-W. P. Rent Act XVIII of 1873, s. 95.*—It was held that the Civil Courts were precluded by the provisions of section 95 of Act XVIII of 1873 from taking cognisance of a claim to obtain possession of a tenant-holding based on the averment that the zemindar, the real defendant, had sanctioned a mortgage of the holding to the plaintiff, and appropriated the mortgage-money in satisfaction of arrears of rent due by the tenant, the mortgagor and *pro forma* defendant, and that, having placed the plaintiff into possession, he had subsequently wrongfully dispossessed him. **MUAZZIM ALI KHAN v. SHEO PARSHAD**
[7 N. W., 250]

183. ——— Suit to recover sir land from person having no right to possession.—*N.-W. P. Rent Act XVIII of 1873, s. 95.*—It was held that the Civil Courts were not precluded by the provisions of section 95 of Act XVIII of 1873 from taking cognisance of a suit to recover possession of sir land, brought on the allegation that the defendants had without any right taken possession of it. There was no question under section 10 of the Act which needed to be determined, but only the question whether the defendants took possession of the land in dispute with or without right, as trespassers or as tenants. **GHISA v. DIDARI** . . . **7 N. W., 257**

184. ——— Suit for ejectment of person wrongfully in possession as tenant.—*N.-W. P. Rent Act, XVIII of 1873, s. 95.*—It was held (in accordance with the opinion of TURNER, SPANKIE, and OLDFIELD, JJ. STUART, C. J., and PHARSON, J., dissenting) that the Civil Courts were not precluded by the provisions of section 95 of Act XVIII of 1873 from disposing, after the passing of the Act, of a suit which was instituted in the Court of first instance before the passing thereof, in which the main matter in dispute was whether the plaintiff was entitled to eject the defendants from their holding on the ground of their not having a right of occupancy, and retaining possession of the holding wrongfully after the expiry of the term of the lease granted to their father. **RADHA PARSHAD SINGH v. BALMUKAND ODJA** . . . **7 N. W., 318**

JURISDICTION OF CIVIL COURT— continued.

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—*con-* *tinued.*

185. ——— Suit for perpetual injunction to restrain ejectment of tenant.—*Act XII of 1881 (N.-W. P. Rent Act), s. 95.*—*Act I of 1877 (Specific Relief Act), s. 56 (b) and (f).*—A tenant, on whom a notice of ejectment had been served under the N.-W. P. Rent Act, 1881, and whose suit to contest his liability to ejectment, brought under that Act, had failed, sued in the Civil Court for a perpetual injunction to prevent his ejectment, basing his suit on an agreement that he should not be ejected so long as he paid a certain rent. Held that the suit was not maintainable, the jurisdiction of the Civil Court being excluded by section 95 of the Rent Act and by section 56 (b) and (f), of the Specific Relief Act. **MAHIP SINGH v. CHOTU**
[I. L. R., 5 All, 429]

186. ——— Suit by landlord to determine nature of tenant's tenure.—*N.-W. P. Rent Act (Act XII of 1881), s. 95 (a).*—The cognisance by the Civil Courts of a suit by a landholder for a declaration that a tenant is not a tenant at fixed rates, or an occupancy tenant, but a tenant-at-will, is barred by the provisions of section 95 (a) of the N.-W. P. Rent Act, 1881. **MAHARAJA OF BENARES v. ANGAN** . . . **I. L. R., 7 All, 112**

187. ——— Suit for declaration of proprietary right to land.—*Suit for a declaration that tenant is a tenant-at-will and liable to have his rent enhanced at will.*—*Act XII of 1881 (N.-W. P. Rent Act), s. 95 (a) and (l).*—A suit for a declaration that the plaintiffs are the proprietors of a village, and the defendants are tenants thereof at the will of the plaintiffs and liable to have the rent enhanced at the will of the plaintiffs, is, as regards the claim for a declaration of right, cognisable in the Civil Courts, but not as regards the other claims, such claims raising questions under section 10 and section 95 (a) and (l), N.-W. P. Rent Act, 1881, exclusively cognisable in the Revenue Court. **ANTU v. GHULAM MUHAMMAD KHAN** . . . **I. L. R., 6 All, 110**

188. ——— Suit to recover under grant of land rent-free.—*N.-W. P. Rent Act (XVIII of 1873), s. 95 (c).*—*N.-W. P. Land Revenue Act (Act XIX of 1873), ss. 79, 241.*—*Jurisdiction of Revenue Court.*—The plaintiff claimed the possession of certain land by virtue of a grant thereof to him, not merely of the proprietary right in such land, but of the rents of the same undiminished by the payment of the revenue assessed thereon which the grantor took upon himself to pay. Held, *per* STUART, C. J., PHARSON, J., and SPANKIE, J., that the suit was cognisable by the Civil Courts. **JAGAN NATH PANDAY v. PRAG SINGH**
[I. L. R., 2 All, 545]

189. ——— Suit for damages for use and occupation of land.—*N.-W. P. Rent Act (XII of 1881), s. 95 (l).*—*Landholder and tenant.*—

JURISDICTION OF CIVIL COURT—
*continued.***21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—**
*continued.***Suit for damages for use and occupation of land—***continued.*

Sir land.—*Determination of rent of ex-proprietary tenant.*—A co-sharer, in whose mahal, assigned on partition, sir land belonging to another co-sharer had been included, without having applied to the Revenue Court to have the rent of the latter in respect of such sir land determined, under section 95 (b) of Act XII of 1881, sued the latter in the Civil Court for damages for the use and occupation of such sir land "without obtaining a lease or having the rent fixed." *Held*, following the principle laid down in *S. A. No. 914 of 1879*, that such suit was not maintainable. **RAM PRASAD RAI v. DINA KUAR**

I. L. R., 4 All., 515

140. ——— *Landholder and tenant.*—*Ex-proprietary tenant.*—*Rent Act XII of 1881 (N.-W. P. Rent Act), ss. 95 (b), 206.*—*T.*, who had acquired the proprietary rights of *D.* in a certain mahal, sued *D.* in a Civil Court for damages for the use and occupation of sir land of which *D.*, on losing such rights, had become by law the ex-proprietary tenant. *Held* that, *T.* being *D.*'s landlord, such suit was not maintainable in the Civil Courts. **Ram Prasad Rai v. Dina Kuar**, I. L. R., 4 All., 515; *S. A. No. 768 of 1881*; and *S. A. No. 914 of 1879*, followed. *Held*, also, that the provisions of section 206 of the N.-W. P. Rent Act were not applicable, it not being possible to treat the suit as being in any respect the claim that alone *T.* was entitled to make on *D.*, which was a claim for rent assessed or ascertained in the mode provided in that Act. **DHIAN RAI v. TEAKUR RAI** . . . I. L. R., 5 All., 25

141. ——— *Suit for money wrongly collected as rent.*—*Lease of zemindari rights.*—*Wrongful dispossession.*—*Lessor and lessee.*—*Suit for compensation.*—*N.-W. P. Rent Act (XVIII of 1873), s. 95, cl. (m).*—*A.* granted *B.* a lease of his zemindari rights in certain villages for a term of years at a fixed annual rent. Two years before the term expired, in breach of the conditions of the lease, he dispossessed *B.*, and thereafter made collections of rent from the agricultural tenants himself. *B.* sued him in the Civil Court to recover the money so collected by him in those two years. *Held* (by a majority of the Full Bench) that the Courts of Revenue were open to *B.*, and that, as he could obtain in such a Court the relief he sought in the suit by an application for compensation for wrongful dispossession, the Civil Courts could not, under clause (m), section 95 of Act XVIII of 1873, take cognisance of the suit. *Per* STUART, C. J., and SPANKIE, J.—That as the matter was not one on which *B.* could make an application to a Revenue Court of the nature mentioned in clause (m), section 95 of Act XVIII of 1873, the suit was properly instituted in the Civil Court. **ABDUL AZIZ v. WALI KHAN** . . . I. L. R., 1 All., 338

JURISDICTION OF CIVIL COURT—
*continued.***21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—**
continued.

142. ——— *Suit for possession of land and for mesne profits.*—*N.-W. P. Rent Act (Act XVIII of 1873), s. 95 (m) and (n).*—*Revenue Court, Jurisdiction of.*—*T.*, the occupancy tenant of certain lands, gave *K.* a lease of his occupancy rights for a term of twenty years. In the execution of a decree for the ejectment of *T.* from such lands obtained by the landholder against *T.* in a suit to which *K.* was no party, *K.* was ejected from such lands. This decree was subsequently set aside, and *T.* recovered the occupancy of such lands. *Held*, in a suit by *K.* against *T.* and the landholder, in which *K.* claimed the occupancy of the lands and mesne profits for the period during his dispossession, in virtue of the lease, that the suit was cognisable in the Civil Courts, and not one on the subject-matter of which an application of the nature mentioned in section 95 of Act XVIII of 1873 could have been made, so as to give the Courts of Revenue exclusive jurisdiction in such matter. **KALIAN DAS v. TIKA RAM** . . . I. L. R., 2 All., 137

143. ——— *Suit for compensation for wrongful dispossession.*—*N.-W. P. Rent Act, 1873, s. 95, cl. (m) and (n).*—*Wrongful dispossession of land.*—In an estate held by *S.* as a sub-proprietor he held certain land with a right of occupancy. *G.*, the zemindar, obtained a decree against *S.* in a Civil Court for the possession of the estate, in execution of which he ousted *S.* from the estate including the land held by him with a right of occupancy. This decree having been set aside, *S.* recovered the possession of the estate including such land, and sued *G.* in the Civil Court for the value of the crops standing on such land at the time he was ousted from it by *G.*, and for the rents of a portion of such land which *G.* had let to tenants while in possession of it. *Held* that the suit was cognisable by the Civil Courts, and that *G.* was liable for such rents. **SAWAI RAM v. GIR PRASAD SINGH** . I. L. R., 2 All., 707

144. ——— *Suit for declaration of right to re-formed land.*—*Landlord and tenant.*—*Submergence of occupancy tenant's land.*—*Dilation.*—*Liability for rent.*—*Resumption by landholder.*—*Custom.*—*N.-W. P. Rent Act (XII of 1881), s. 95 (n).*—A landholder, alleging that by local custom when land was submerged, and the tenant ceased to pay rent for the same, his right to it abated, and when the land reappeared the landholder was entitled to possession thereof; that certain land belonging to him had been submerged, and the occupancy-tenant thereof had ceased to pay rent for it; and that such land had reappeared and had come into his possession under such custom, sued such tenant in the Civil Court for a declaration of his right to the possession of it. *Held* that the suit, even if maintainable, was not, with reference to the provisions of section 95 (n) of Act XII of 1881, cognisable in the Civil Courts. **KUPIL RAI v. RADHA PRASAD** . . . I. L. R., 5 All., 260

JURISDICTION OF CIVIL COURT— *continued.*

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—*continued.*

145. ——— Suit for recovery of land of which tenant has been dispossessed.—*Relation of landlord and tenant admitted.*—*Act XII of 1881, s. 95 (a).*—A landholder served a notice of ejectment on G., under the provisions of section 36 of the Rent Act (N.-W. P.), as a tenant-at-will. Under the provisions of section 39 of the Act G. contested his liability to be ejected, on the ground that he was not a tenant-at-will, but one holding by virtue of an agreement executed in his favour by the landholder. The question of G.'s liability to be ejected was decided adversely to him, and he was ejected under section 40 of the Act. He subsequently sued the landholder in the Civil Court for possession of the land, by virtue of the agreement, alleging that his ejectment was a breach of such agreement. The landholder's defence to this suit was that G. had been rightfully ejected. *Held* that inasmuch as the relation of landlord and tenant between the parties at the time of the proceedings under the Rent Act was admitted, and the dispute in the suit could appropriately form the subject of an application under clause (a) of section 95 of that Act, the suit was not cognisable in the Civil Courts. *Muhammad Abu Jafer v. Wali Muhammad, I. L. R., 3 All., 81; Sukhdai Mier v. Karim Chaudhri, I. L. R., 3 All., 521; Kanahia v. Ram Kishan, I. L. R., 2 All., 429, distinguished. Shimbhu Narain Singh v. Bachcha, I. L. R., 2 All., 200, referred to. GANGA RAM v. BHNI RAM I. L. R., 7 All., 148*

146. ——— Suit for declaration of right as tenant.—*Landholder and tenant.*—*Declaratory decrees.*—*Act XII of 1881, s. 95 (a).*—A suit in which the plaintiff claims, as the tenant of land, that he may be declared to be the tenant, and that the defendant, the landholder, may be restrained from interfering with his right to the land as a tenant, and in which the defendant denies the relation between him and the plaintiff of landholder and tenant, is not a suit which is exclusively cognisable in the Revenue Court. *SHEODISH NARAIN SINGH v. RAMESHAR DIAL [I. L. R., 7 All., 188*

147. ——— Suit for rent where the right to receive it is disputed.—*N.-W. P. Rent Act (XII of 1881), s. 148.*—*Landholder and tenant.*—*Third person.*—In a suit for rent between a landholder and a tenant under the N.-W. P. Rent Act, 1881, where the right to receive rent is disputed, any rights which the landholder may have against the third person, who has been made a party to the suit, under section 148 of the Act, can only be enforced through the medium of the Civil Court by a suit for declaration of title and for recovery of any rents improperly collected by such person. *Held*, therefore, where in such a suit it was found that the third person had actually and in good faith received the rent sued for, the claim should not have been de-

JURISDICTION OF CIVIL COURT— *continued.*

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—*continued.*

Suit for rent where the right to receive it is disputed—*continued.*
creed against him, but should have been dismissed. *MADHO PRASAD v. AMBAR . I. L. R., 5 All., 508*

148. ——— Suit for contribution among pattidars for Government revenue.—*Revenue Court.*—*N.-W. P. Land Revenue Act (Act XIX of 1873).*—The question in the case was whether the plaintiff, a pattidar who had paid a sum on account of a demand for Government revenue, should sue to recover from the defendants, his co-pattidars, the balance in excess of his own quota in the Civil or in the Revenue Court. *Held* (SPANKIE, J., dissenting) that the Civil Courts were competent to entertain suits of the nature. *Per SPANKIE, J., contra. RAM DIAL v. GULAB SINGH . I. L. R., 1 All., 28*

149. ——— Suits for determination of rights.—*Record-of-rights, Entries in.*—*N.-W. P. Land Revenue Act XIX of 1873, ss. 62, 91, 94, 241.*—*Jurisdiction of Revenue Courts.*—The Civil Courts are not competent to try suits to alter or amend a record-of-rights, or to give directions in respect of the same, but they are not debarred from entertaining and determining questions of right merely because such questions have been the subject of entries in the record-of-rights, and because such determination may show that such entries are wrong and need correction. Consequently, a claim in the Civil Court for a declaration of the right to make certain collections of rent and to defray therewith certain village expenses, though such right had been the subject of an entry in the record-of-rights adverse to the person claiming such right, was held to be maintainable. *SUNDAR v. KHUMAN SINGH . I. L. R., 1 All., 614*

150. ——— Suit for declaration of right to zemindari cesses.—*N.-W. P. Land Revenue Act, XIX of 1873, s. 66.*—*Beng. Reg. VII of 1822, s. 9, cl. i.*—Notwithstanding that zemindari cesses cannot be collected until recognised and sanctioned by the settlement authorities, there is nothing in Regulation VII of 1822, or Act XIX of 1873, to preclude a Civil Court from taking cognisance of suits seeking a declaration of zemindari rights to such cesses. *AKBAR KHAN v. SHEORATAN [I. L. R., 1 All., 373*

151. ——— Suit to enforce cess.—*N.-W. P. Land Revenue Act, XIX of 1873, s. 66.*—A cess leviable in accordance with village custom which is not recorded under the general or special sanction of the Local Government cannot, under section 66 of Act XIX of 1873, be enforced in a Civil Court. *LALA v. HIRA SINGH I. L. R., 2 All., 49*

152. ——— Suit to dispute partition by Revenue Court.—*Question of proprietary right decided by Revenue Court under Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 113.*—*Omission by Revenue Court to frame decrees.*—*Decision*

JURISDICTION OF CIVIL COURT— continued.

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—continued.

Suit to dispute partition by Revenue Court—continued.

of Revenue Court not open to attack by suit in Civil Court.—A Revenue Court acting under the provisions of sections 112 and 113 of the N.-W. P. Land Revenue Act (XIX of 1873), recorded a proceeding declaring the nature and extent of the respective rights of the parties before the Court, and prescribing the mode in which partition should be effected. No decree was framed in accordance with this proceeding. *Held* that the proceeding of the Revenue Court was a decision by a Court of competent jurisdiction, and could not be interfered with by a suit in the Civil Court disputing its correctness. *BHOLA v. RAMDHIN*. I. L. R., 7 All., 894

See *RANJIT SINGH ILAHI BAKSH*

[I. L. R., 5 All., 520]

153. ——— Suit after partition on reference to arbitration.—*Co-sharers in sir land.*—*Determination of rights.*—An agreement to refer to arbitration the partition of a mahal provided that, if sir land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer to whom it might be assigned. The arbitrator assigned certain sir land belonging to the defendants in this suit to the plaintiffs. The partition was concluded according to the terms of the award. The defendants refused to surrender such land to the plaintiffs. The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants and arrears of rent were due. The defendants thereupon sued the plaintiffs and such persons in the Revenue Court, claiming such produce as their own. The Revenue Court held that such distress was illegal, as such land was in the possession and cultivation of the defendants as occupancy tenants under section 125 of Act XIX of 1873. The plaintiffs subsequently sued the defendants in the Civil Court for possession of such land, basing such suit on the partition proceedings. *Held* that the decision of the Revenue Court did not debar the Civil Courts from determining the rights of the parties under the partition, and such suit was cognisable in the Civil Courts. *ABHAI PANDY v. BHAGWAN PANDY*. I. L. R., 3 All., 818

154. ——— Suit for possession of land assigned on condition of service.—*Resumption and assessment of rent.*—*N.-W. P. Land Revenue Act XIX of 1873, ss. 79 and 241.*—The plaintiffs sued for possession of certain land in a village alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village watchmen, and that the defendant had ceased to perform those duties and was holding as a trespasser. The defendant alleged that he and his predecessors had held the land rent-free for 200 years, and that he held it as a proprietor. *Held* that the plaintiffs'

JURISDICTION OF CIVIL COURT— continued.

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—continued.

Suit for possession of land assigned on condition of service—continued.

claim was not one to resume such a grant or to assess rent on the land, of which a Revenue Court could take cognisance under sections 30 and 95 (c) of Act XVIII of 1873 or sections 79 and 241 (h) of Act XIX of 1873, but one which was cognisable by the Civil Courts. *PURAN MAL v. PADMA* [I. L. R., 2 All., 733]

155. ——— *Resumption of rent-free grant.*—*Act XII of 1881, ss. 30, 95 (c).*—*Act XIX of 1873, s. 241 (h).*—A zemindar brought a suit to recover possession of certain land in the village which was held by the defendants rent-free, in consideration of rendering services as *kharpatis*, on the ground that he was entitled, as zemindar, to dispense with their services, and that therefore they no longer possessed any right to hold the land. The claim was resisted by the *kharpatis* on the ground that for many years they had been in possession of the land as *muafi*-holders. *Held* that the dispute so raised was a matter which could form the subject of an application to resume a rent-free grant within the meaning of section 30 of the N.-W. P. Rent Act (XII of 1881), and that the cognisance of the suit by the Civil Court was therefore barred by clause (c) of section 95 of that Act, and that, for similar reasons, the Civil Court, under clause (h) of section 241 of the N.-W. P. Land Revenue Act (XIX of 1873) could not exercise jurisdiction over the matter of the suit. *TIRA RAM v. KHUDA YAR KHAN*. I. L. R., 3 All., 191

156. ——— Suit for possession of rent-free and revenue-free tenures.—*Assessment and settlement of revenue-free land.*—*Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 241.*—Certain land was settled with the defendants in this suit. The Settlement Officer having declared that the plaintiffs in this suit had acquired a proprietary right to such land under the provisions of section 82 of Act XIX of 1873 and were entitled to hold it rent-free, the defendants applied to the Settlement Officer to assess such land and to settle it with the plaintiffs as the persons in actual possession as proprietors. This having been done by the Settlement Officer, the plaintiffs sued the defendants to be maintained in possession of such land free of revenue and for the cancellation of the Settlement Officer's order. *Held* that, under section 241 of Act XIX of 1873, the suit was not cognisable in the Civil Courts. *ZALIM SINGH v. UJAGAR SINGH*. I. L. R., 3 All., 367

157. ——— Suit to set aside Collector's order for contribution.—*Malikana.*—*Government revenue.*—*N.-W. P. Land Revenue Act (Act XIX of 1873), s. 241 (b).*—At the settlement of a certain village, a *malikana* allowance of 10 per cent. on the revenue was reserved for C., the *talukdar* to whom the village belonged. At the same

JURISDICTION OF CIVIL COURT— *continued.*

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—*continued.*

Suit to set aside Collector's order for contribution—*continued.*

settlement, the muafi holding of A. in the village was resumed, and assessed to revenue; but A. refused to engage for it, and it was therefore merged for revenue purposes in the mehal of the village, though still held by A. In 1872, A. obtained in the Civil Court a decree by which he was declared to be the proprietor of his holding, and to be entitled to engage for it separately; and thereupon the Collector constituted the holding a separate mehal by causing a khewat to be prepared, and fixing the proportion of the revenue assessed upon the entire mehal which the muafi holding should bear. Subsequently the zemindars of the village applied to the Collector that A. might be made to contribute towards the payment of the malikana allowance of the talookdar. The Collector passed an order declaring A. to be liable to such contribution; and A. then instituted a suit for cancellation of the Collector's order, for a declaration of his non-liability to contribute to the malikana allowance of the talookdar, and for a refund of contribution already paid. *Held* that, inasmuch as the decree of the Civil Court in 1872 and the proceedings of the Collector consequent thereon constituted the muafi holding a "mehal" in the terms of section 3, Act XIX of 1873, and by the terms of sections 53-55 of the same Act, a malikana allowance, such as that under reference, is "revenue," and section 241 (b) bars the jurisdiction of the Civil Courts in matters regarding the amount of revenue to be assessed on any mehal, the suit was not cognisable by a Civil Court. *GAYADAT v. KUTUB-UN-NISSA* . . . I L R., 6 All., 578

158. — Suit for declaration of non-liability of land to assessment of revenue.—*Jurisdiction of Civil Court.—Declaratory decree.—Act XIX of 1873, s. 241.*—The Civil Courts are not debarred by section 241 of Act XIX of 1873 (N.-W. P. Land Revenue Act) from taking cognisance of a suit for a declaration that land, which the Revenue Officers seek, under the provisions of that Act, to assess to revenue, is included in an area which has already been permanently settled, and is therefore not liable to further assessment. *Government v. Raj Kishen Singh*, 9 W. R., 427; *Collector of Futtchpore v. Munglee Pershad*, N. W. P., S. D. A., 1854, p. 167; *Raghunath Subhas v. Bishen Singh*, N. W. P., S. D. A., 1855, p. 302; *Zoolikar Ali v. Ghunnam Barea*, N. W. P., S. D. A., 1855, p. 92; and *Uppu Lakshmi Bhayamma Garu v. Purvis*, 2 Mad., 167, referred to. SECRETARY OF STATE FOR INDIA IN COUNCIL v. RAM UGRAH SINGH . . . I L R., 7 All., 140

159. — Suit to recover land wrongly recorded at settlement.—*Partition of mehal.—N.-W. P. Land Revenue Act XIX of 1873, s. 241 (f).*—B., the recorded proprietor of a 7 biswas 10 biswansis share in a village, the recorded area of

JURISDICTION OF CIVIL COURT— *continued.*

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES—*continued.*

Suit to recover land wrongly recorded at settlement—*continued.*

which was 476 bighas and 5 biswas, purchased a 16 biswansis and 13½ kachwansis share in the same village. In 1872, at the time of settlement, B. was recorded as the proprietor of an 8 biswas 6 biswansis and 13½ kachwansis share, and the area of this was recorded as 476 bighas and 5 biswas, that is to say, the same area as was recorded before the purchase. In 1876, H. purchased B.'s rights and interests in the village, and in 1877 applied for partition of the share of which he had been recorded proprietor, and the same was partitioned, an area of 476 bighas and 5 biswas being allotted to him. Subsequently he brought a suit against the proprietors of the other estates into which the village had been divided, for 61 bighas 4 biswas and 8 biswansis of land, alleging that, at the settlement of 1872, the area of B.'s rights and interests had been erroneously recorded as only 476 bighas and 5 biswas. *Held* that the suit would not lie in the Civil Court, being barred by the provisions of section 241 (f) of the N.-W. P. Land Revenue Act (XIX of 1873). *HABIBULLAH v. KUNJI MAL* . . . I L R., 7 All., 447

160. — Suit to question legality of settlement by Collector.—*Annulment of settlement.—Fresh settlement.—Act XIX of 1873, s. 241.*—A settlement of land belonging to G. and which he had mortgaged, having been annulled under section 158 of the N.-W. P. Land Revenue Act (XIX of 1873), the land was farmed by the Collector of the District under section 159. The revenue having fallen into arrears, the Collector, under the same section, took the land under his own management. Subsequently, under sections 165 and 43 of the Act, the land was settled with G.'s wife. In a suit to enforce against the lands a mortgage executed by G. to the plaintiff, —*Held* that the Court was precluded by the terms of section 241 (f) of the Revenue Act from entering into the question whether the settlement was legally made by the Collector with the wife of the mortgagor, that she must therefore be taken to represent such rights and interests as the mortgagor possessed, and that consequently the estate was liable in her hands for the mortgage, and the mortgagee was entitled to claim foreclosure against her. *BARI BABU v. GULAB CHAND* . . . I L R., 7 All., 454

161. — Suit to resume a rent-free grant.—*Services.—N.-W. P. Rent Act, XII of 1881, ss. 3 (2), 30, 95 (c).—N.-W. P. Land Revenue Act, XIX of 1873, ss. 3 (4), 79-89, 241 (h).—Beng. Regs. VIII of 1793, s. 41, and XIX of 1793, s. 10.*—A suit was brought for the ejectment of the defendant from certain land, on the allegations that it was rent-paying land which had been granted to the defendant's vendor by the plaintiff's father free from payment of any rent, on condition that he should perform certain services as a mimic, and that these services were discontinued by the defendant's vendor.

JURISDICTION OF CIVIL COURT— continued.

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES— continued.

Suit to resume a rent-free grant— continued.

The plaintiff endeavoured to resume the land in the Revenue Court as a rent-free grant under section 30 of the N.-W. P. Rent Act (XII of 1881), but the application was rejected. In answer to the suit, the defendant pleaded that it was not cognisable by the Civil Court. *Held*, by **OLDFIELD, J.** (**MAHMOOD, J.**, dissenting), that the suit could not be held to be one to resume a rent-free grant, inasmuch as there was no rent-free grant at all in the sense of section 30 of the Rent Act, and that the Civil Court therefore had jurisdiction to entertain the suit. *Held*, by **MAHMOOD, J.**, that the land constituted a rent-free grant, that the claim was one for the resumption of such grant or subjecting it to assessment to rent, and that under these circumstances the suit was not cognisable by the Civil Court. *Per* **OLDFIELD, J.**—The definition of the term "rent" in section 3 of the Rent Act was intended to include services or labour rendered for the use of land, and the grantees in the present case was a tenant who rendered rent in this sense on account of the use of the land. Further, there was no such grant as is contemplated by section 30 of the Rent Act, inasmuch as that section refers to grants for holding land exempt from the payment of rent alluded to in section 10 of Regulation XIX of 1793, and that Regulation, assuming it to refer to grants free from payment of rent as well as of revenue, contemplated grants not only free from payment of rent in cash or kind, but free from payment of anything in lieu thereof. A tenure such as in the present case, where the land was land originally paying rent in cash, and where the cash rent was exchanged for rendition of services, is not a rent-free grant within the meaning of the Regulation, nor consequently of section 30 of the Rent Act. *Mutty Lall Sen Gyal v. Deshkar Roy, B. L. R., Sup. Vol., 774: 9 W. R., 1; and Puran Moh v. Padma, I. L. R., 3 All., 732*, referred to. *Per* **MAHMOOD, J.**—The services connected with the grant in this case did not constitute "rent" within the meaning either of the N.-W. P. Rent Act, or of the N.-W. P. Land Revenue Act (XIX of 1873), and the word "render" in section 3 of the former Act does not include or imply the rendering of services or labour. The word "rent" is probably used as the equivalent of the Hindustani words *lagan* or *poth* representing the compensation receivable by the landlord for letting the land to a cultivator, and section 3 of the Rent Act, where it uses the expressions "paid, delivered, or rendered," must be taken to refer respectively to rent paid in cash, to rent delivered in kind, and to rent rendered by appraisement or valuation of the produce. The grant in the present case was a rent-free grant of the nature of *chakran* or *chakri*, i.e., service tenure, to which section 41 of the Regulation VIII of 1793 related. The incidents of the tenure would be governed by section 30 of the Rent Act and sections 79-84 of the Land Revenue

JURISDICTION OF CIVIL COURT— continued.

21. RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES— continued.

Suit to resume a rent-free grant— continued.

Act, being matters outside the jurisdiction of the Civil Court. The scope of section 10 of Regulation XIX of 1793 is not limited to permanent rent-free grants, and the present suit was in respect of a matter falling within section 95 (c) of the Rent Act, and "provided for in sections 79 to 89, both inclusive," of the Land Revenue Act, within the meaning of section 241 (4) of the latter Act. *Puran Mal v. Padma, I. L. R., 3 All., 732; Tika Ram v. Khuda Yar Khan, I. L. R., 7 All., 191; and Forbes v. Meer Mahomed Tuques, 13 Moore's I. A., 438*, referred to. **WARIS ALI v. MUHAMMAD ISMAIL**

[I. L. R., 8 All., 553]

22. REVENUE.

162. ———— (Suit to try liability to public revenue on land.—*Wrongful acts by executive officer of Government.*—The Civil Courts have jurisdiction to entertain suits brought to try questions of liability to the public revenue assessed upon land. Where a suit is brought for alleged wrongful acts by an executive officer of Government, the circumstance that the acts complained of were done in enforcing payment of a revenue assessment sanctioned by Government does not, *per se*, preclude the jurisdiction of the Court to entertain the suit. But acts done by Government through its executive officers, not contrary to any existing right, according to the laws administered by the Municipal Courts, although they may amount to grievances, would afford no cause of action cognisable by the Civil Courts. **UPPU LAKSHMI BHAYANMA GARU v. PRAVIS** 2 Mad., 187

163. ———— Suit against officers of sea customs for act done without jurisdiction.—*Revenue, Matter concerning.*—53 Geo. III. c. 155, ss 99 and 100.—*Mad. Reg., IX of 1863, s. 55.*—*Per* **INNES** and **KERNAN, J.J.** (*dissentients THE CHIEF JUSTICE*).—The High Court of Madras has jurisdiction to try original suits against Revenue officers for acts *ultra vires* done in their official capacity. The provision of the Letters Patent of the late Supreme Court, whereby such suits were excepted from the jurisdiction of the Supreme Court, has not been continued by the Letters Patent of the High Court so as to except such suits from the original jurisdiction of the High Court, but has been impliedly repealed by those Letters Patent. *Per* **KERNAN, J.**—The said provision was repealed by 59 Geo. III. Cap. 155, sections 99 and 100, except as to land revenue. *Per* **INNES, J., contra.** *Per* **THE CHIEF JUSTICE** and **INNES, J.**—The District Court of Chingleput continued down to the year 1876 to have jurisdiction under Madras Regulation IX of 1803, section 55, in suits against customs officers at Madras. **COLLECTOR OF SEA CUSTOMS v. CHITTHAMBARAM** I. L. R., 1 Mad., 89

JURISDICTION OF CIVIL COURT— *continued.*

22. REVENUE—*continued.*

164. ———— Payment of hak in respect of majumdari watan.—*Bombay Act VII of 1863, s. 32.*—The payment of a hak in respect of a majumdari watan, though charged on villages, is not “a share of the revenues, thereof,” within the meaning of section 32 of (Bombay) Act VII of 1863 and therefore a suit to recover majumdari watans resumed by Government is cognisable by the Civil Courts. *GOVERNMENT OF BOMBAY v. DAMODHAR PARMANANDAS* [5 Bom., A. C., 202]

165. ———— Land revenue.—*Toddy spirit.*—*Bombay Revenue Jurisdiction Act, No. X of 1876, ss. 3, 4, 5.*—*Bombay Abkari Act, No. V of 1878, ss. 24, 29, 54, and 67.*—*Land Revenue Code, Bombay Act No. V of 1879, s. 82.*—*Bom. Regulation XXI of 1827, s. 60.*—The plaintiff sued to recover from the defendant, a farmer of abkari duties on the manufacture of spirits, under section 60 of Bombay Regulation XXI of 1817, a sum of money alleged to have been illegally levied by him as tax or rent through the mamlatdar in respect of certain coconut trees tapped by the plaintiff in 1877-1878 and 1878-1879. *Held* that the Civil Courts have jurisdiction to entertain such a suit. If the claim be held to be one in respect of land revenue, it falls within the exception contained in clause (c) of section 5 of Act X of 1876. If it is not, section 4 of the Act has no application. *Per BIRDWOOD, J.*—The expression “land revenue” as used in Act X of 1876 does not include either the duties leviable, under Regulation XXI of 1827, on the manufacture of spirits, or the taxes on the tapping of toddy trees, the levy of which in certain districts was legalised by section 24 of the Bombay Abkari Act No. V of 1878. A farmer of duties on the manufacture of spirits is not authorised to levy a duty on any juice in trees, either under Regulation XXI of 1827, or Act X of 1876, or Bombay Act V of 1878. Juice in toddy-producing trees is not spirit, which includes toddy in a fermented state only. *NARAYAN VENKU KALGUTKAR v. SAKHARAM NAGU KOREGAUMKAR* [I. L. R., 9 Bom., 462]

166. ———— Suit to recover possession of land added to estate paying revenue directly to Government.—*Act IX of 1847, ss. 6 and 9.*—No suit will lie in a Civil Court to recover possession of lands which have been added to an estate paying revenue directly to Government by the Revenue authorities after an inspection of maps under section 6 of Act IX of 1847, although such lands have re-formed on an old site of land belonging to another. *DEWAN RAMJEWAN SINGH v. COLLECTOR OF SHAHABAD*

[14 B. L. R., 221, note: 18 W. R., 64]

RAM JEWAN SINGH v. COLLECTOR OF SHAHABAD
[19 W. R., 127]

23. REVENUE COURTS.

(a) GENERALLY.

167. ———— Suits which cannot be brought in Revenue Court for want of jurisdiction.—*Semble.*—There is authority for

JURISDICTION OF CIVIL COURT— *continued.*

23. REVENUE COURTS—*continued.*

(a) GENERALLY—*continued.*

Suits which cannot be brought in Revenue Court for want of jurisdiction—*continued.*

holding that the Civil Courts may entertain suits which cannot be brought in the Revenue Court, although a portion of the claim is of a nature of which the exclusive cognisance is given to Revenue Courts. *OSMAN KHAN v. CHOWDREY SHORAJ SINGH* 5 N. W., 42

168. ———— Claims to money in deposit with Collector.—*Civil Procedure Code, 1859, ss. 237, 242.*—Section 237 of the Civil Procedure Code, 1859, gave no authority to a Civil Court to dispose of claims to money in deposit with a Collector, nor did section 242 give such a Court authority to dispose of claims to money under attachment. *IN THE MATTER OF BROJONATH MITTER* . 13 W. R., 301

169. ———— Suit containing items cognisable by Civil Court.—*Jurisdiction of Revenue Courts.*—*Act X of 1859, ss. 23, 24.*—In districts where Act X of 1859 is still in force, the jurisdiction of the Civil Courts cannot be ousted, except in cases where the parties concerned and the matters in dispute come wholly and exclusively within the category of persons and subjects in respect of which express jurisdiction is given to the Revenue Courts. Where, therefore, a suit which contained some items of charges cognisable by the Civil Court was instituted in such Court, —*Held*, reversing the decisions of the Courts below, that such suit was properly so brought. *KUMOOD NARAIN BHOOF v. PURNA CHUNDER ROY* [I. L. R., 4 Calo., 547: 3 C. L. R., 258]

(b) PARTITION.

170. ———— Suit to set aside partition.—*Question of title.*—There is nothing in the law which makes the order of a Collector in a butwara proceeding final as regards questions of title. *ODDOR SINGH v. PALUCK SINGH* 16 W. R., 271

171. ———— Suit for partition of land paying revenue.—Where the real object is to obtain a division of the lands of an estate paying revenue to Government, the suit is not maintainable in a Civil Court. *DOORSA KAIPIA ROY v. MOHESH CHUNDER ROY* 15 W. R., 242

172. ———— Suits for partition of estates paying revenue to Government.—*Beng. Reg. XIX of 1814, s. 8.*—*Apportionment of revenue.*—Regulation XIX of 1814, section 3, which requires that the partition of estates paying revenue to Government should be executed under the supervision of the Collector, applies only where there is a revenue payable to Government, which must be apportioned when a division of the estate is made. It does not apply where in making a division of the property it is unnecessary to apportion the revenue, it being already apportioned and payable by each of the owners of each of the parts of the original estate. A suit

JURISDICTION OF CIVIL COURT—continued.**REVENUE COURTS—continued.****(b) PARTITION—continued.****Suits for partition of estates paying revenue to Government—continued.**

for partition in such a case may be entertained by the Civil Court. *SHAMA SOONDURIE DEBIA v. PURUSH NARAIN ROY* . . . 20 W. R., 182

173. — Suit to set aside partition under Beng. Reg. XIX of 1814, and for re-distribution of shares in estate.—The plaintiffs and defendants were owners of an undivided estate. Besides their share as part-owners, the plaintiffs held some of the estate as tenants and some as purchasers from some of their co-sharers in the estate. The whole estate was partitioned under Regulation XIX of 1814, and on such partition the lands which the plaintiffs held as tenants and as purchasers were allotted to co-sharers other than those under whom the plaintiffs held or from whom they purchased. In a suit by the plaintiffs for declaration of their title to those lands and for a re-distribution of the shares,—*Held* that the Court had no jurisdiction to entertain a suit to alter a partition effected by the Revenue authorities. *SHARAT CHUNDER BURMON v. HURGOBINDO BURMON* . . . I L. R., 4 Calc., 510

RADHA BULLUBE SINGH v. DHEERAJ MAHTA-CHAND . . . 2 W. R., Mls., 51

174. — Suit by allottee at private partition to stay proceedings and have his possession confirmed.—*Butwara*.—*Proceedings under Beng. Reg. XIX of 1814*.—*Partition by private arrangement*.—An allottee under a private partition sued to stay subsequent proceedings brought under Regulation XIX of 1814 and to have his possession confirmed. The defendants objected to the suit being heard by the Civil Court, no proceedings having first been instituted before the Revenue authorities. *Held* that the question whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders, and the Civil Court was entitled to adjudicate on the plaintiff's claim to be in possession of lands as comprising his share in the estate, and, on his succeeding in proving his claim, to declare that those lands belonged to his divided share. *JAYNATH ROY v. LALL BAHADUR SINGH*

[I L. R., 8 Calc., 126; 10 C. L. R., 146]

175. — Suit to establish shares after rejection of portions.—Where the Collector directs that a separate account should be opened with the co-sharer of an estate on his application, and his share is found not to be such as he states it to be, the co-sharers are at liberty to bring a suit in the Civil Court to establish the extent of their shares, in the event of the Collector under the butwarra law rejecting their application for a division of their specific shares. *KHEEDOO THAKOOR v. BAUGWUT*

ALL . . . 16 W. R., 9

JURISDICTION OF CIVIL COURT—continued.**23. REVENUE COURTS—continued.****(b) PARTITION—continued.**

176. — Suit for partition of lands excluded by Collector.—On partition of a certain mehal, lands belonging thereto were excluded by the Collector. It being afterwards satisfactorily found that such lands really belonged to the mehal and ought not to have been so excluded, it was held that a suit would lie in a Civil Court for partition of the excluded lands on the basis of the former partition. *Sree Misser v. Crowdys*, 15 W. R., 243, distinguished. *KRISHNO KUMAR BAIKAK v. BHIM LALL BAIKAK* [4 C. L. R., 38]

177. — Suit for declaration of right to share.—There is nothing in the butwarra law or in any other regulation to prevent the Civil Court from entertaining a suit for a declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. *SPENCER v. PUNUL CHOWDERY*. *SPENCER v. KADIE BUKER* . . . 6 R. L. R., 658; 15 W. R., 471

See AHMEDULLA v. ASHERUFF HOSSAIN [8 R. L. R., Ap., 73, note]

178. — Suit for partition.—*Revenue-paying estate*.—*Partition*.—*Civil Procedure Code (Act X of 1877), ss. 11, 265*.—Where one of several co-sharers, owners of a piece of land defined by metes and bounds and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognisable by the Civil Courts which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly. *CHUNDERNATH NUNDI v. HUR NARAIN DEB*

[I L. R., 7 Calc., 153]

179. — Suit to have possession on private partition confirmed.—*Declaration against jurisdiction of Revenue Court to partition*.—*Specific Relief Act, 1877, s. 42*.—Certain proceedings having been instituted to obtain a butwarra of an estate, the plaintiff, who was one of the co-sharers in the estate, filed a suit against the others for a declaration that certain plots, which were comprised in the estate, and which he alleged had been allotted to him on a private partition, were not liable to partition by the Revenue authorities. The plaintiff also prayed for confirmation of his possession, and that certain orders made by the Collector in the butwarra proceedings might be set aside. The Collector was not a party to the suit. The lower Court found that there had been a private partition, and, without taking evidence as to the plots alleged to be held separately by the plaintiff, made a decree declaring that, by reason of the partition, the Collector had no jurisdiction to proceed with the butwarra. *Held* that the Court had no jurisdiction to set aside the orders of the Collector, and that the Court, not having determined the specific property held exclusively under the partition by the plaintiff, the declaration in the decree was not warranted by section 42 of the Speci-

JURISDICTION OF CIVIL COURT—
*continued.***23. REVENUE COURTS—continued.****(b) PARTITION—continued.**

Suit to have possession on private partition confirmed—continued.

fic Relief Act I of 1877. CHURAMUN SINGH v. ANOOF SINGH . . . 11 C. L. R., 533

180. ——— Suit by purchaser at revenue sale for possession of share.—*Partition suit.*—The purchaser at a sale, under Act XI of 1859, section 54, of a share of an aymah estate, sued for possession of the lands in the occupation of the sharer whose rights and interests he had purchased. The other sharers (also defendants in the suit) who had previous to the sale preferred an application under section 11 and made a separate account of their shares with the Collector, alleged that plaintiff was in possession of all that he could claim as purchaser. The lower Courts gave plaintiff a modified decree from which some of the defendants appealed. *Held* that the suit was not a suit for partition and that the Civil Court had jurisdiction. *AFTABOOD-DEEN v. SHUMSOODDEEN MULLICK*

[18 W. R., 461]

181. ——— Suit for injunction to restrain partition.—A Civil Court cannot interfere by injunction to restrain a Collector's power of partition, but where, as between the several shareholders, the extent and nature of the share of each has been determined, the latter is bound to recognise such determination, and to give effect to it by carrying out the partition if the parties apply for it. *KHOOLUN v. WOOMA CHURN SINGH*

[3 C. L. R., 453]

182. ——— Suit to enforce partition.—*Beng. Reg. VII of 1822.—Act XIX of 1863.*—An imperfect partition was made between P. and D., and assented to by them and accepted by the Deputy Collector. In the instrument in which the parties declared their assent, there were passages distinctly bearing on the possibility of inequality in the quantity of irrigated lands in each lot. Some months after, D., complaining (not, however, alleging fraud) that an excess of good and irrigable lands had fallen to the lot of P., applied to the Deputy Collector to set aside or reopen the partition. P. objected and asserted that there was no such inequality. The Deputy Collector made enquiry and held it proved that the lands parcelled to each were of unequal value, and, because P. persisted in denying this, ordered an interchange of lots, imputing fraud to P., but not making any enquiry whether or not D. had been induced by fraud to assent to the partition. It was held that the Deputy Collector had no power to order an interchange of lots, and that the Civil Courts had jurisdiction to entertain a suit by P. to restore him to the possession of the land which fell to him on the partition made and assented to by the parties, and completed by the order of the Deputy Collector accepting it. *DASRAJ v. DHUNI*

[7 N. W., 9]

JURISDICTION OF CIVIL COURT—
*continued.***23. REVENUE COURTS—continued.****(b) PARTITION—continued.**

183. ——— Suit for extra land after partition by Revenue authorities.—*Act XIX of 1863, s. 53.—N. W. P. Land Revenue Act (XIX) of 1873, s. 185.*—A partition was arranged by arbitrators, and carried into effect by an Ameen who marked out the boundaries of the pattis into which the mauza was divided, and was accepted on the 20th of April 1871 by the parties concerned; and was sanctioned by the Commissioner. In November 1872, one of the parties complained that, according to a gashwara (map) filed by the Ameen on the 9th of June 1871, he was entitled to more abadi land than he had got. The revenue authorities, considering that he had accepted the partition and that it had been confirmed, refused to entertain his complaint. He accordingly sued in the Civil Court with a view to obtain the extra land to which he asserted himself entitled. It was held that section 53, Act XIX of 1863, would have precluded the suit, and it was equally barred by the spirit, if not by the letter, of section 185, Act XIX of 1873. *FIDA HOSEIN v. GHOLAM JILANI* . . . 7 N. W., 346

184. ——— Suit to set aside erroneous settlement by Collector.—A Civil Court may set aside a settlement of land erroneously made by the Collector as forming part of a resumed mehal, if the land has not actually been resumed. *ABBOO BIBER v. COLLECTOR OF BACKERGUNGJE*

[1 W. R., 255]

185. ——— Suit to set aside order under Act XIX of 1863.—An order passed in the course of a partition under Act XIX of 1863 is open to revision under section 53 of that Act, but is not liable to be contested in a Civil suit. *ISHER DIAL v. BANYADEN TEWARR* . . . 4 N. W., 7

186. ——— Suit by parties declared out of possession by Revenue Court for establishment of their rights.—*Act XIX of 1863, ss. 8, 9, 10, 11.*—Two of the parties in an application, under Act XIX of 1863, for the partition of a joint undivided estate, were found to be out of possession. *Held*, there was nothing in section 8, 9, 10, or 11 to prevent parties, who have been declared out of possession by the Collector, from suing in a Civil Court to obtain possession by establishment of their right of property in an estate, nor was there anything in those sections which empowered a Collector to determine questions of title. He was only authorised to declare the nature and extent of the interests in actual possession of the parties. *LUCHMAN v. SAIDHO*

[4 N. W., 169]

187. ——— Suit to set aside order of Settlement Officer as to proportion of profits.—*Beng. Reg. VII of 1822, s. 10, cl. 1.*—The plaintiffs, biswadars, sued to set aside the order of a settlement officer, which determined the proportion in which the profits arising out of the limitation of the Government demand should be divided between them and the talookdar. *Held* that, it being

JURISDICTION OF CIVIL COURT— *continued.*

23. REVENUE COURTS—*continued.*

(b) PARTITION—*continued.*

Suit to set aside order of Settlement Officer as to proportion of profits—
continued.

under clause 1, section 10, Regulation VII of 1822, the function of the Governor General in Council to determine such proportion, the suit was not cognisable by a Civil Court. **JOGUL KISHORE v. RAMFERTAB SINGH** . . . 4 N. W., 129

188. ——— Suit in Civil Court for ejectment.—*Refusal of tenant to accept settlement after enhancement, under Beng. Reg. VII of 1822, s. 14, of rent of lands in a town.*—Where the Collector has issued due notice of enhancement under section 14 of Regulation VII of 1822, of the jumma of lands, situate in a town and subject to that Regulation, and on failure by the tenant to accept a settlement at the revised rate, an action in ejectment has been brought, the Civil Court has no power to consider whether the new rate of assessment is reasonable or in any way to interfere with the amount of the revised jumma as fixed by the Collector. **RAM CHUNDER BERA v. GOVERNMENT** . . . 6 C. L. R., 365

189. ——— Suit to alter settlement.—*Beng. Reg. VII of 1822, s. 15.*—Lakhirajdars whose lands have been resumed have the right, under section 15, Regulation VII of 1822 (if not barred by limitation), to bring a civil suit to revise, annul, or alter a settlement made by the Collector, not only as against those who claimed the settlement before the Revenue authorities, but against all who have claims. **BISHORPOO HAZRAH v. DUMONOTER DEBIA**

[15 W. R., 537]

(c) ORDERS OF REVENUE COURTS.

190. ——— Suit to reverse order of Revenue Court.—Parties suing to reverse an order of the Revenue Courts may do so in the Civil Courts. **NANKU ROY v. MAHABIE PRASAD**

[3 B. L. R., Ap., 35; 11 W. R., 405]

Contra, **HASSAN ALLEE v. BUDDEROODDEEN**

[1 W. R., 141]

MAHOMED FAZUL v. OOMAKANT SHIN

[1 W. R., 159]

191. ——— Suit to set aside proceeding of Collector in execution.—A Civil Court cannot set aside the proceeding of a Collector in execution of a decree of his own Court. **RAJ KISHORE MULLICK v. BRINDABUN CHUNDER PODDAR**

[15 W. R., 119]

192. ——— Suit under Bengal Act VIII of 1865, s. 18.—*Appeal to Collector.*—An appeal to the Collector was not necessary as a condition precedent to a suit in the Civil Court under section 18, Bengal Act VIII of 1865. **NUGENDRO CHUNDER GHOSH v. MUSRUFF BIBER**

[15 W. R., 17]

JURISDICTION OF CIVIL COURT— *continued.*

23. REVENUE COURTS—*continued.*

(c) ORDERS OF REVENUE COURTS—*continued.*

193. ——— Suit to question award of Collector under Act I of 1847.—*Boundaries.*—An award of the Collector under Act I of 1847 in respect of boundaries was not final, even though undisturbed on appeal; nor was he competent to do more than demarcate by visible and tangible marks the boundaries between estates and fields. His award, therefore, was liable to be questioned by a suit in the Civil Court. **RAM JEWUN SINGH v. RADHA PRESHAD SINGH** . . . 16 W. R., 109

194. ——— Suit to compel purchaser at sale for arrears of rent to furnish security.—*Beng. Reg. VIII of 1819, ss. 5 and 7.*—A zemindar cannot bring a suit in the Civil Court to compel the purchaser of a putai in his estate sold by auction for arrears of rent to furnish security for the amount of half the yearly jumma. If the purchaser of the putai is not willing to give security for the payment of his rent, the zemindar's remedy is, under Regulation VIII of 1819, sections 5 and 7, to appoint his own sezawal, or collector, and deduct his own rents from the collections before handing over the surplus to the putnidar, who, moreover, is declared by section 7 to take all the risk of the attachment. This remedy of the zemindar is not affected by the grant by him of a dur-putai to a third party. **JOY KISHEN MOOKERJEE v. JANKENATH MOOKERJEE** . . . 17 W. R., 470

195. ——— Order of Collector under s. 11, Act XI of 1859, Power of Civil Court to interfere with.—*Quare.*—Whether the Civil Court can interfere with a Collector's order, under section 11, Act XI of 1859, opening a separate account with the recorded sharer of a joint estate. **SHURUFOONISSA BEBER v. HUSEMUT ALI**

[9 W. R., 533]

196. ——— Suit to set aside order of Collector.—*Act XI of 1859, s. 11.*—The plaintiff and A. and B. were joint owners of an estate paying revenue to Government. The names of A. and B. were alone recorded in the rent-roll of the Collector. A. and B. alienated certain specific portions of the lands of the estate to their wives, and applied to the Collector, under section 11 of Act XI of 1859, to open a separate account for payment of the proportionate share of the revenue payable in respect of the lands so alienated. The plaintiff objected to such separation, on the ground that the lands had never been divided, but always held *ijmali*, and that A. and B. claimed a larger share than they owned; but his objection was rejected by the Collector on the ground that he was not a recorded proprietor, and the application of A. and B. was granted. The plaintiff now sued in the Civil Court for a declaration of the extent of his share in the joint estate, and to have the order of the Collector set aside. *Held* that the Civil Court had jurisdiction to entertain such a suit, and that it was not necessary to

JURISDICTION OF CIVIL COURT—continued.**23. REVENUE COURTS—continued.****(c) ORDERS OF REVENUE COURTS—continued.****Suit to set aside order of Collector—continued.**

make the Collector a party. **HARGOBIND DAS v. BARODA PRASAD DAS** . . . 6 B. L. R., 614
[15 W. R., 112]

MADAN MOHUN MAZUMDAR v. RAISTAB CHANDRA MANDAL, PURNA CHANDRA GANGULI v. MADAN MOHAN MAZUMDAR
[6 B. L. R., 617, note: 13 W. R., 67]

197. ——— Suit to set aside order of Revenue Court under Act XIX of 1863.—A suit in the Civil Court did not lie to set aside the decision passed by the Revenue authorities in the exercise of the power vested in them by section 8, Act XIX of 1863. However irregular the proceedings be, and not in conformity to the provisions of that section, the proper course for the party aggrieved was by appeal in the manner prescribed by the Act. **BUKETA v. GUNGA** . . . 3 Agra, 161

198. ——— Interference with decrees of Revenue Court.—Fraud.—Proceedings held by the Revenue Courts in execution of their own decrees are final, and cannot be interfered with by the Civil Courts, unless on some special ground, like that of fraud. **BHOJUNGA THAKOOR v. LUCHMER NARAIN SAHNI** . . . 9 W. R., 80

199. ——— Suit to set aside decree for fraud.—Act X of 1859, s. 28.—The provisions of section 28, Act X of 1859, are no bar to the institution in the Civil Court of a suit by a ryot, farmer, or tenant for maintenance of possession, nor to a suit to set aside a decree of a Revenue Court on the ground that it had been obtained by fraud. **RAMESWAK CHOWDHURI v. NACKOHENDU SINGH**
[3 Agra, 357
S. C. Agra, F. B., Ed. 1874, 160]

200. ——— Suit to set aside decrees on *kabuliat* alleged to be false.—Failure to show fraud.—Plaintiff had executed a kistbundi for arrears of rent decreed against him by a Revenue Court. He then sued to set aside the decrees and kistbundi, on the ground that the decree had been based on a fraudulent and fictitious *kabuliat*. The suit, though dismissed in the first Court, was decreed on appeal. *Held*, on special appeal, there being no evidence of the fraud on the record of the case, that the plaintiff was not entitled to a decree. **MURBIAM BIBBE v. MAHOMED JAMAL** . . . 12 W. R., 380

201. ——— Suit to set aside order of Collector refusing to sell for arrears of rent.—A suit will not lie in the Civil Court against an order of a Collector refusing to hold a sale of a tenure for arrears of rent. **ROY HUREKISHEN v. NURSING NARAIN** . . . 6 W. R., Act X, 63

202. ——— Suit to set aside order of Collector for registration of names.—A suit will not lie in the Civil Court to set aside an order

JURISDICTION OF CIVIL COURT—continued.**23. REVENUE COURTS—continued.****(c) ORDERS OF REVENUE COURTS—continued.****Suit to set aside order of Collector for registration of names—continued.**

by a Collector, made under section 27, Act X of 1859, for the registration of the names of the defendants as shikmi talookdars in the plaintiff's *serishta*. **MAHOMED NOOR BUKSH v. MOHUN CHUNDER PODDAR** . . . 6 W. R., Act X, 67

203. ——— Suit to establish claim to tenure not requiring registration.—Transfer of tenure not requiring registration in *zamidari serishta*.—*Suit to establish claim to tenure.*—The subletting of a tenure does not necessarily make a ryot a middleman. A ryot who holds land under cultivation by himself, or by others taking under him, is not a middleman. His holding, therefore, was not one the transfer of which required registration under section 27, Act X of 1859, and a suit will lie in the Civil Court in such a case by an unsuccessful claimant under section 106 of that Act. **KAROO LALL THAKOOR v. LUCHMERPUT DOOGRE** . . . 7 W. R., 15

204. ——— Suits to reverse summary awards for rent.—Question of title.—In a suit brought by ryots to reverse summary awards for rent, the Court, instead of deciding the question of title between the co-defendants, should merely determine to whom the plaintiffs have paid rent in past years, and their liability for the present year, in accordance with their past payments and the possession of the property evidenced thereby, leaving the contending co-sharers to settle the question of title in a separate suit brought for that purpose. **MUDDOOSOODUN ACHARY v. KISHORE HAZRAH**
[W. R., F. B., 36]

205. ——— Suit to set aside order of Revenue Court directing ejectment.—Cause of action.—Res judicata.—A Revenue Court having ordered a tenant to be ejected under section 10 of the Rent Recovery Act, on the ground that he had refused to accept a pottah as directed by the Court, the tenant brought a suit in the Civil Court to set aside the order of the Revenue Court. *Held* that the suit would not lie. **RAGAVA v. RAJAGOPAL**
[I. L. R., 9 Mad., 39]

206. ——— Suit for money paid as rent.—Rent paid twice.—The plaintiff sued to recover money which she had paid as rent to the zamindar, under a decree of the Revenue Court, after she had already paid her rent to his gomastah. *Held* that the suit was not cognisable by the Civil Court. **SAUDAMINI DAS v. THAKOMANI DEBI**
[3 B. L. R., Ap., 114]

207. ——— Suit after decision of Revenue Court under Act X of 1859, s. 77.—Question of title.—After a decision by a Revenue Court under section 77, Act X of 1859, a Civil Court might determine the legal title to the rent; and, when determining such title, the Civil Court might also determine whether any rent which may have been lost

JURISDICTION OF CIVIL COURT— continued.

28. REVENUE COURTS—continued.

(c) ORDERS OF REVENUE COURTS—continued.

Suit after decision of Revenue Court under Act X of 1859, s. 77—continued.

to a party by the decision of the Revenue Court might not be recouped to him. **KEFART HOSSEIN v. SHUM-SHARE ALI** 13 W. R., 458

208. ——— Enquiry into legality of proceedings of Collector.—*Beng. Act VII of 1868.—Certificate under s. 18.*—In a suit for arrears of rent it appeared that the plaintiff claimed under a pottah granted by the owner of land after a certificate had been issued against him out of a Collector's office under Bengal Act VII of 1868. The defendants had purchased the land in question at a sale held under the Act. The plaintiff alleged that the certificate had not been served, and that no notice before the certificate was issued was served upon the grantor as required by section 18 of the Act: and he contended that as the Collector's proceedings were irregular, the pottah was valid. The District Judge held that the Civil Court had no power to enquire into the Collector's proceedings, and must, as nothing appeared to the contrary, assume that they were regular, and dismissed the suit. *Held* that the Judge was bound to examine the proceedings of the Collector to see that they were legal and regular so as to constitute a legal bar to the grant of the pottah, and that the Judge was not at liberty to make any presumption in favour of their legality or correctness. **HEM LOTTA v. SREEDHON BOROOA** [I. L. R., 3 Calc., 771]

209. ——— Suit for execution of decree in summary suit for rent.—A regular suit to enforce a decree obtained in a summary suit for rent, which the Revenue Court has refused to execute, upon the ground that it has been satisfied cannot be maintained in the Civil Court (*STEEB, J.*, dissenting). **ANANDA MAYI DAS v. PATIT PABUNI DASI** [B. L. R., Sup. Vol., 18: W. R., F. R., 118]

210. ——— Suit to enforce decree of Revenue Court.—As a general rule, a suit cannot be brought in a Civil Court to enforce a decree of a Revenue Court under Act X of 1859. Such decrees can be enforced only by execution, and the limitation for proceedings to execute them was defined by Act X itself. **AGHORE CHUNDER MOOKERJEE v. WOOMA SOONDEREE DABEA** 7 W. R., 216

ODHESH COOMAR SINGH v. RAM GOBIND SINGH [9 W. R., 145]

211. ——— Suit for amount due under decree in rent suit.—*J. K. D.* instituted a suit before a Deputy Collector, under Act X of 1859, against *L. N. R.*, for money due from the defendant as his gomastah. The parties, before judgment, filed a petition of compromise, according to which it was agreed that the amount admitted by *L. N. R.* to be due (Rs25) should be paid by instalments, and it was stipulated that, on failure to pay any instalment, "the

JURISDICTION OF CIVIL COURT— continued.

28. REVENUE COURTS—continued.

(c) ORDERS OF REVENUE COURTS—continued.

Suit for amount due under decree in rent suit—continued.

whole debt will be realised at once, and I (*L. N. R.*) shall be charged interest at half per cent. per month and it is prayed that the case be disposed of according to the above terms." The Deputy Collector decreed—"Let the case be disposed of in accordance with the terms of the compromise." *J. K. D.* assigned his interest under that decree to *E. M. D.* *L. N. R.* failed to pay an instalment. *E. M. D.* then applied to the Deputy Collector to execute the decree for the whole amount with interest, but his application was refused. Thereupon, *E. M. D.* brought an action in the Civil Court against *L. N. R.* for the amount due with interest. *Held*, the suit would not lie in the Civil Court to recover the amount due under the Act X decree. The parties to the compromise contemplated that the whole amount and interest should be realised only by process of execution to be issued out of the Revenue Court, which was to be delayed till a failure to pay an instalment had taken place. On the refusal of the Deputy Collector to issue execution for the amount of the debt, the plaintiff should have appealed to the Commissioner. **RAM MOHAN DAS v. LAKHI NARAYAN ROY** [4 B. L. R., A. C., 207]

S. C. LUCKHUR NARAIN ROY v. RAM MOHUN DOSS 13 W. R., 151

212. ——— Suit to set aside sale by order of Collector.—A Civil Court had no jurisdiction to entertain a suit to set aside a sale by order of a Collector, under Act X of 1859, in execution of a decree for arrears of rent due on the tenure of which the sale was made. **HARANUND DUTT v. RAM DRUP SHIN** W. R., 1864, Act X, 122

213. ——— Suit to set aside sale for arrears of revenue.—*Act XI of 1859, s. 33.*—Plaintiff not having appealed to the Revenue Commissioner against the sale of his estate for arrears of Government revenue, the Civil Court was not competent, under section 33, Act XI of 1859, to entertain a suit for the annulment of the sale. **MOHUN LALL TAGORE v. COLLECTOR OF TIRHOOT** . 1 W. R., 356

214. ——— Suit by under-tenant to recover tenure sold for arrears of rent.—*Act X of 1859, s. 106.*—An under-tenant might sue in the Civil Court to recover his under-tenure sold by his zemindar for arrears of rent, although he did not previously intervene in the Collector's Court, under section 106, Act X of 1859. **MOOKTOKASHEE DAS-SIA v. BHOJUNDEE COOMAR ROY** [3 W. R., Act X, 156]

215. ——— Suit to set aside rent decree after failure to appeal against it.—Where the Deputy Collector refused plaintiff's application to set aside a rent decree as passed against him upon a confession of judgment fraudulently filed by other parties, and the value of the suit being beneath

JURISDICTION OF CIVIL COURT— continued.

23. REVENUE COURTS—continued.

(c) ORDERS OF REVENUE COURTS—continued.

Suit to set aside rent decree after failure to appeal against it—continued.

R100, the plaintiff might have appealed to the Collector under section 14, Bengal Act VI of 1862,—*Held* that, having failed to do so, he had no right to bring a suit for the purpose in the Civil Court. **RAJ KISHEN MOOKHERJEE v. MODHOO SOODUN MUNDLE** [17 W. R., 413]

216. ——— Suit to recover land sold in execution of decree for rent.—A suit lay in the Civil Court for the recovery of land fraudulently sold in execution of a decree for rent, under Act X of 1859, against a party not in possession without suing specifically to set aside the sale. **NOOR BUKSH v. MEAN JAN** . 6 W. R., Act X, 60

217. ——— Suit to set aside sale of under-tenure.—*Act X of 1859, s. 108.*—The owner of an under-tenure might sue in the Civil Court for a declaration that the sale of his under-tenure under Act X of 1859 was illegal and void under section 108 of that Act, and that he was entitled to possession of the land in suit notwithstanding such illegal sale. **SHUROOF CHUNDER BHUTTACHARJEE v. KASHEESHUREN DOSSIA** . 6 W. R., Act X, 55

218. ——— Suit to set aside Revenue sale on account of fraud.—An *ex-parte* decree for an arrear of rent having been passed by a Revenue Court against certain tenants, and their land having been put up for sale in execution and bought by the decree-holders, the tenants brought a civil suit to get rid of the sale as well as of the decree. The lower Courts, finding that the whole of the proceedings had been conducted without the knowledge of the plaintiffs and that a fraud had been intended, gave them a decree setting aside the sale, and affirming plaintiffs' title in the disputed land. *Held*, in special appeal, that as the parties came up on a ground of equity, the High Court could interfere without prejudice to the jurisdiction of the Revenue Courts. Accordingly, on the principle that the defendants should not be allowed to take advantage of their own fraud, it was decreed (the purchase-money being still in deposit in the Collectorate) that the defendants should re-convey the property to the plaintiffs. **SHIBO SOONDUREN DOSSER v. PANCHOWREE CHUNDR**

[14 W. R., 158]

219. ——— An action lies in the Civil Court to set aside a purchase fraudulently made at a sale in execution of a decree of a Revenue Court which has been obtained by fraud. **NILMANI BURNICK v. PUDDO LOCHAN CHUOKERBUTTY** [B. L. R., Sup. Vol., 379 : 5 W. R., Act X, 20]

AGHOBB LALL SHAMUNT v. GYANANUND ROY [6 W. R., Act X, 11]

BUCKLAND v. ASHOO CHOWDHRAIN [9 W. R., 326]

JURISDICTION OF CIVIL COURT— continued.

23. REVENUE COURTS—continued.

(c) ORDERS OF REVENUE COURTS—continued.

Suit to set aside Revenue sale on account of fraud—continued.

BROJENDRO COOMAR CHOWDHRY v. RAM COOMAR HOLDAR 13 W. R., 32

DEEN DIAL SINGH v. DANEE ROY [13 W. R., 185]

220. ——— Suit to set aside sale of under-tenure under Act X of 1859.—*Fraud.*—The purchaser of an under-tenure might sue in the Civil Court to set aside a sale of the under-tenure in execution of a decree for arrears of rent under Act X of 1859, on the ground that such decree was obtained by fraud subsequently to his purchase. **GUNGA DOSS DUTT v. RAMNARAIN GHOSH**

[B. L. R., Sup. Vol., 625]

2 Ind. Jur., N. S., 111 : 7 W. R., 183

SODAMINER DOSSER v. BHOLANATH SHAHA [9 W. R., 363]

221. ——— Suit to set aside sale in execution of decree.—*Act X of 1859, s. 105.*—*Fraud.*—The Civil Court had jurisdiction to entertain a suit instituted by A. to set aside a sale of his tenure under section 105 of Act X of 1859, on the ground that the sale was held under a decree obtained fraudulently against B., who was not the real owner. **RAMSUNDAR PORAMANICK v. PRASANNA KUMAR BOSH**

[B. L. R., Sup. Vol., 382 : 5 W. R., Act X, 22]

222. ——— Suit to set aside sale for arrears of rent.—*Act X of 1859, s. 105.*—*Fraud.*—A Civil Court had jurisdiction to entertain a suit by a tenant to recover possession of a tenure from an auction-purchaser at a sale for arrears of rent under section 105 of Act X of 1859, although there is no allegation of fraud, the tenant not having been a party to the decree for arrears of rent. **MEAN JAN MUNSHI v. KURRUMAMAYI DEBI** . 8 B. L. R., 1

223. ——— Suit to set aside sale by order of Revenue Court.—*Fraud.*—A sale by order of a Revenue Court can be set aside by a decree of the Civil Court, even if held directly under Act XI of 1859. In this case the sale had taken place under section 110 of Act X of 1859. **JOYDOORGA DEBIA v. GOPAL CHUNDER BANERJEE**

[9 W. R., 538]

224. ——— Suit to set aside illegal sale by Collector.—In a suit to set aside a sale by a Collector under Act X of 1859, on the allegations that, at the time of the sale, a warrant of execution previously obtained against the moveable property of the judgment-debtor still remained in force, and that the deposit on the purchase-money was not paid until fourteen days had elapsed, it was held that such allegations, if proved, would amount to illegalities, and that a suit to declare such a sale null and void would lie in the Civil Court. **ALI BUKSH SHAH v. NUBEN BUKSH** 9 W. R., 600

JURISDICTION OF CIVIL COURT—
*continued.***23. REVENUE COURTS—continued.****(c) ORDERS OF REVENUE COURTS—continued.**

225. ——— Suit by judgment-debtor to set aside sale by Revenue Court.—The Civil Court has jurisdiction to entertain a suit by a judgment-debtor under a decree of the Revenue Court for confirmation of his right in immoveable property sold by his execution-creditor under an order of the Revenue Court for the sale of the rights and benefits of the judgment-debtor in the suit in which the order was made, and for a declaration that the sale was void. **CHANDRAKANT BHATTACHARJI v. JADUPATI CHATTERJI** . 1 B. L. R., A. C., 177; 10 W. R., 224

226. ——— Suit to set aside Collector's sale and recover property.—*Costs of partition.*—*Order of Collector for payment of proportionate share of costs by co-sharers.*—*Suit to set aside sale.*—The Civil Court decreed partition (butwarra) of an estate in a suit brought by some of the co-sharers in the estate, and ordered the plaintiffs to pay the costs of the partition. The Collector, however, called upon the defendants, the other co-sharers, to pay a portion of the fees to the Ameen who effected the partition, namely, in proportion to the shares allotted to them by the decree; and in default of payment of the whole of such portion he sold the defendants' shares in the estate. *Held* that the Collector acted *ultra vires*, and a suit was maintainable in a Civil Court to set aside the sale and for recovery of the property. **RAJ NATH Sahu v. LALLA SITAL PRASAD**

[2 B. L. R., F. B., 1: 10 W. R., F. B., 66]

227. ——— Suit to set aside sale when made without arrears of revenue being due.—*Sanction of Commissioner.*—A suit to set aside a sale under Act XI of 1859, on the ground that no arrear of revenue was due, may be brought in the Civil Court without previous appeal to the Commissioner. **THAKUR CHURN ROY v. COLLECTOR OF 24-PERGUNNAHS** . 13 W. R., 336

228. ——— Suit to question regularity of sale in execution under Collector's order.—When a sale had taken place by order of the Collector in execution of a decree under Act X of 1859, a civil suit lay for the purpose of questioning the regularity and propriety of the proceeding. Where circumstances indicate not merely irregularity, but irregularity brought about by the contrivance of the decree-holder, the Civil Court has jurisdiction to set the sale aside, and is right in doing so. **TEKANT BHAI NARAIN DEO v. COURT OF WARDS** [15 W. R., 59]

dissenting from **RUTTUN MONEE DOSSIA v. KALAKISHEN CHUCKERBUTTY** . W. R., F. B., 147

229. ——— Suit by person injured by sale of non-transferable tenure in execution of decree of Revenue Court.—Where a tenure has been sold in execution of a decree by a Revenue Court, a third person, not a party to the suit in that Court, alleging that the tenure was not transferable, and seeking to have his right to possession vindicated against the pretended transferee, is

JURISDICTION OF CIVIL COURT—
*continued.***23. REVENUE COURTS—continued.****(c) ORDERS OF REVENUE COURTS—continued.**

Suit by person injured by sale of non-transferable tenure in execution of decree of Revenue Court—*continued.*

entitled to complain in the Civil Court, and to ask protection against the probable injurious consequences to himself of the Collector's decree. **JYKISHEN MOOKERJEE v. HURRSHUR MOOKERJEE**

[9 W. R., 296]

230. ——— Suit to set aside sale on ground other than fraud.—*Act X of 1876, s. 4.*—*Sale for arrears of revenue, Suit to set aside.*—Section 4, clause (c) of Act X of 1876 excepts from the jurisdiction of the Civil Courts claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue. *Quære.*—Whether the exception of fraud in the above enactment is confined to fraud on the part of officers conducting sales for arrears of land revenue. **BAL-KRISHNA VASUDEV v. MADHAYRAN NARAYAN**

[I. L. R., 5 Bom., 73]

24. SANADS.

231. ——— Suit to cancel or set aside sanad as granted by mistake.—*Summary settlement.*—*Sanad.*—*Revocation of sanad.*—*Gates.*—*Wanta.*—*Mazmun Narva.*—*Bhagdari.*—Where a sanad by way of summary settlement of land revenue has been granted by Government under Bombay Act VII of 1863, Government cannot reform or set it aside without the assent of all parties interested therein. To do so would be an assumption, by Government, of the function of a Civil Court. A Civil Court cannot, on the ground that Government has, by mistake, granted such a sanad to a person not the owner of the land, reform or set aside the sanad. Section 7 of Bombay Act VII of 1863 renders the quit-rent, fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad subject to the quit-rent fixed by the sanad, and payable to Government; and such grantee will be declared to have taken the sanad as a trustee for the rightful owner. *Quære.*—Whether a Civil Court can give relief, either by reforming or cancelling such sanads, against mistakes other than those relating to ownership which may be found to exist in the sanads. **DOLSANG BHAVSANG v. COLLECTOR OF KAIRA** . I. L. R., 4 Bom., 467

25. SERVICES, PERFORMANCE OF—

232. ——— Suit to enforce services by barbers.—*Cause of action.*—A suit cannot be maintained in the Civil Courts to enforce the performance of certain services by barbers. **RAJKISO MAJEE v. NOBAH SEAL** . 1 W. R., 351

26. SOCIETIES.

233. ——— Suit to enforce admission as member of a society.—A suit will not lie

JURISDICTION OF CIVIL COURT— continued.

26. SOCIETIES—continued.

Suit to enforce admission as member of a society—continued.

to force the defendants to admit the plaintiff into their society. *RADHOO NISSEN v. RAM JUNOO NISSEN* 2 Hay, 88

234. ——— Suit for declaration of right to be member of a society.—*Exclusion from somaj.*—*Beng. Reg. III of 1793, s. 8.*—In a suit for a decree declaratory of the right of a person to the membership of a somaj (society), upon the allegation that the other members have excluded him from the somaj,—*Held* that as such exclusion neither deprived him of caste, nor affected any right of property, it is not cognisable by the Civil Court. The members of a society are the sole judges whether a particular person is entitled to continue as a member or not. Section 8, Regulation III of 1793, commented on. *SUDHARAM PATAR v. SUDHARAM*

[3 B. L. R., A. C., 91: 11 W. R., 457

235. ——— Suit on account of exclusion from invitation to dinners.—Civil Courts cannot compel Hindus, against their will, to ask other Hindus to their houses or their entertainments. *JOY CHUNDER SIRDAR v. RAMOHUN*

[6 W. R., 323

27. SOVEREIGN PRINCES.

236. ——— Suit against independent Sovereign Prince.—*Personal privilege.*—*Thakur of Palitana.*—An independent sovereign prince is privileged from suit in the Courts of British India. The Thakur of Palitana is an independent sovereign prince. *LADKUVARBHAI v. SANSANGJI PRATAB-SANGJI* 7 Bom., O. C., 150

237. ——— Suit against ex-King of Oudh.—*Act VIII of 1862, s. 4.*—Section 4, Act VIII of 1862, did not prevent the Civil Courts from entertaining a suit against the ex-King of Oudh without the consent of the Government. *IN THE MATTER OF THE PETITION OF BEGUM BIBEE*

[7 W. R., 168

238. ——— Suit against Tipperah Rajah.—*Sovereign Prince.*—*Zemindari in British territory.*—The succession to the Raj of Tipperah being of itself beyond the jurisdiction of British Civil Courts, it would be out of their power, in a suit relating solely to the title of the Rajah to a zemindari in British territory, to go into the question of the Rajah's title to the Raj. The Rajah being a foreign power, the Courts would accept the title to the Raj of the person recognised as Rajah by the British Government. But where a zemindari lying within British territory, and not shown to be an appanage of the Raj, formed the subject of a suit, *Held*—that, since the right to the Raj had, by a long course of litigation, been made by the parties themselves to depend, as it were, upon the right to this zemindari, the Civil Courts had jurisdiction to deal with the title to the latter; and that the law applicable to the suit would

JURISDICTION OF CIVIL COURT— continued.

27. SOVEREIGN PRINCES—continued.

Suit against Tipperah Rajah—continued.

be the Hindu law modified by the Kulachar or local custom regulating succession and inheritance in the Tipperah family. The recognition of the Rajah by the British Government is less a matter of right than one of discretion, his position being that of a petty Rajah of a hill district, rather than that of a sovereign power. *Held* in concurrence with the first Court, upon a consideration of the whole evidence and the conduct of the late Rajah, as well as that of the plaintiff and the Ranis of the late Rajah, that though the legitimacy of the plaintiff had been satisfactorily established, and it was shown that his mother had been married to the late Rajah in the shantigrihita form, yet it was clear that defendant had been created Jubaraj by the late Rajah, and the plaintiff's claim must accordingly be dismissed with costs. *RAJKUMAR NOBODIP CHUNDRO DEB BURMUN v. BIR CHUNDRA MANIKYA BAHADOOR*

[25 W. R., 404

239. ——— *Zemindari in British territory.*—*Civil Procedure Code, 1877, s. 433.*—Save in respect of his zemindari in British territory, the Rajah of Tipperah is not subject to the jurisdiction of the Courts in British India, except in cases mentioned in clauses (a), (b), (c), section 433, Act X of 1877. *Nil Kristo Deb Barmano v. Bir Chunder Thakur*, 8 B. L. R., P. C., 13; and *Rajkumar Nobodip Chundro Deb Burmua v. Bir Chundra*, 25 W. R., 407, cited. *BIR CHUNDER MANIKYA BAHADUR v. ISHAN CHUNDER THAKUR*

[3 C. L. R., 417

240. ——— *Sovereign Prince.*—*Suit against Sovereign Prince with respect to land owned by him, and situate in British India.*—*Maintenance.*—*Charge on immoveable property.*—*Benefits to arise out of land.*—*General Clauses Consolidation Act (I of 1868), s. 2, cl. 6.*—*Civil Procedure Code (Act X of 1877), Chap. XXVIII, s. 433.*—The Rajah of Hill Tipperah is a Sovereign Prince within the meaning of Chapter XXVIII of Act X of 1877, and cannot be sued personally in the Courts of British India except under the conditions specified in section 433 of that Act. The fact of a defendant not subject to the jurisdiction of a Court having waived his privilege in previous suits brought against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction. A suit for maintenance which seeks to have the maintenance made a charge on immoveable property is not a suit for immoveable property within the meaning of clause (c), section 433, Act X of 1877, nor is it a suit for "benefits to arise out of land" within the meaning of the definition of the words "immoveable property" contained in Act I of 1868, section 2, clause 6. A claim for maintenance is not a charge upon immoveable property. A member of the royal family of Hill Tipperah brought a suit against the Rajah to have it declared that with respect to certain land situate within British India, and forming portion of the posses-

JURISDICTION OF CIVIL COURT—
*continued.***27. SOVEREIGN PRINCES—continued.****Suit against Tipperah Rajah—continued.**

sions of the Rajah, he was entitled to the post of Juboraj, and to succeed to such land on the death of the Rajah, and also claimed maintenance, and sought to have it declared that such maintenance should be a charge on the revenues of the land situate in British India. *Held* that the British Courts had no jurisdiction to entertain the suit, it not being one for immoveable property. **BEEB CHUNDER MANIKHYA v. RAJ COOMAR NOBODDEP CHUNDER DEB BURMONO** [I. L. R., 9 Calc., 535; 12 C. L. R., 435]

241. ——— Civil Procedure

Code, 1877, s. 433.—Suit for charge for maintenance on independent Sovereign State.—In a suit against the Maharajah of Hill Tipperah, which is an independent Sovereign State, for maintenance, it appeared that, in a former suit tried in British India in respect of the same claim, the Court had ordered the amount of the maintenance for which he gave a decree to be paid by the defendant Maharajah and from his estate of R. which was in British India. *Held* that the suit not being a suit for immoveable property would not lie, and, further, that the decree in the former suit was *not res judicata* to show that the maintenance claimed in the present suit was a charge upon the zamindari of R., so as to give the Court jurisdiction under clause (c) of section 433 of the Civil Procedure Code. **BIB CHUNDER MANIKHYA v. ISHAN CHUNDER TAGORE** 12 C. L. R., 473

242. ——— Suit against the Desai of Patadi.—Ruling Chief.—Code of Civil Procedure (XIV of 1882), ss. 432 and 433.—The Desai of Patadi, a talookdar of the fifth class in the province of Kathiawar, in virtue of his being the proprietor of seven villages within the British Political Agency of Kathiawar, is a ruling chief within the meaning of sections 432 and 433 of the Code of Civil Procedure (XIV of 1882), and can only be sued with the consent of the Government in a competent Court not subordinate to the District Court. **KAMBHAI v. HIMATSINGJI** I. L. R., 3 Bom., 415

28. SURVEY AWARDS.

243. ——— Suit to set aside survey award.—Beng. Reg. IX of 1883, s. 9.—Section 9 of Regulation IX of 1883 referred only to decisions of punchayets, and did not bar a suit in the Civil Court to set aside an award of survey authorities as null and void. **RAJ KISHEN ROY v. SURUT CHUNDER CHUCKERBUTTY** 4 W. R., 79

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SIKUNDAR ALI v. PURWURUSH ALI 3 N. W., 132

29. TRESPASS.

244. ——— Suit to have door closed on account of apprehended trespass.—Held that a suit for the closing of a door on account of apprehended trespass will not lie in the Civil Courts. **PARUM SOOKH v. SENTA RAM** 2 Agra, 119

JURISDICTION OF CRIMINAL COURT.

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See SUPREME COURT, CALCUTTA.

[1 Moore's I. A., 67]

I. GENERAL JURISDICTION.

1. ——— Presumption of jurisdiction.—Objection to jurisdiction.—The High Court being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed, but the contrary. Where the High Court had jurisdiction to try a prisoner for the offence committed, if a charge had been made against him by a person authorised to make that charge, and the prisoner pleaded not guilty,—*Held* that proof need not be given that the officer had authority to send up the charge. Objections to the jurisdiction should be made before pleading to the general issue. **QUEEN v. NABADWIP GOSWAMI** [1 B. L. R., O. Cr., 15; 15 W. R., Cr., 71; note 17 W. R., Cr., note

2. ——— Resistance of process of Civil Court.—The resistance of process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of criminal jurisdiction. *In re Chander Kant Chuckerbutty*, 9 W. R., Cr., 63, overruled. **QUEEN v. BHAGAI DAFADAR**

[2 B. L. R., F. B., 21; 10 W. R., Cr., 43]

3. ——— Questions of title.—Construction of documents.—It is at all times desirable that questions of title should not be tried in Criminal

JURISDICTION OF CRIMINAL COURT —continued.

1. GENERAL JURISDICTION—continued.

Questions of title—continued.

Courts, and more especially where such questions depend on the construction of obscure documents, or fall to be decided in reference to transactions of which at the best but an imperfect record is preserved. *QUEEN v. KISHEN PERSHAD*

[2 N. W., 202]

4. ——— Special law, Effect of, on general jurisdiction.—*Criminal breach of trust by trustee of temple.*—*Mad. Reg. VII of 1817.*—*Act XX of 1863.*—The ordinary criminal law is not excluded by Regulation VII. of 1817, or Act XX of 1863. *ANONYMOUS CASE*. I. L. R., 1 Mad., 55

5. ——— Special law, Jurisdiction under, Effect of Criminal Procedure Code on.—*Criminal Procedure Code (Act X of 1882), s. 1.*—The jurisdiction conferred by the Code of Criminal Procedure (Act X of 1882) does not affect any special jurisdiction or power conferred by any law in force at the time when the Code came into force. *QUEEN-EMPRESS v. GUSTADJI BARJORJI*

[I. L. R., 10 Bom., 181]

6. ——— Order under Criminal Code by executive officer.—*Power of Judicial Courts to question the legality of such order.*—Where an executive officer makes an order or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not. *IN THE MATTER OF THE PETITION OF SURJANARAIN DASS. EMPRESS v. SURJANARAIN DASS*

[I. L. R., 6 Cal., 88]

7. ——— Obstruction to right of way.—*Erection of building on public way.*—Where a party residing on one side of a public lane encroaches on the lane by building, and narrows the passage at that particular spot, so far as to cause the traffic to pass over a portion of the land of the party residing on the opposite side of the lane, the remedy of the latter is, by recourse to the Criminal Court, to prevent the obstruction of the public thoroughfare. If he does not so, he has no cause of action against the other. *ABDOOL HYE v. RAM CHURN SINGH*

[11 W. R., 445]

8. ——— Suit for closing new road and opening old one.—In a suit for closing a new road opened by the defendants through the land of the plaintiff, and for opening an old road, which had been closed by the defendant,—*Held*, by *MARKET, J.*, that the question of opening or closing a public road belongs to the Criminal Court, and not to the Civil Court. *HIRA CHAND BANERJEE v. SHAMA CHARAN CHATTERJEE*

[3 B. L. R., A. C., 351; 12 W. R., 275]

JURISDICTION OF CRIMINAL COURT —continued.

1. GENERAL JURISDICTION—continued.

9. ——— Offence committed on the high seas.—12 & 13 Vict., c. 96.—23 & 24 Vict., c. 88.—An offence committed on the high seas but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Penal Code. The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of 12 and 13, Victoria, Cap. 96, sections 2 and 3, extended to India by 23 and 24 Victoria, Cap. 88. Where certain inhabitants of the village of Manon in the Thana district sallied out in boats and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held that a Magistrate in the Thana district had jurisdiction over the offenders; and that the Penal Code was the substantive law applicable to the case. *EMO. v. KASHYA RAMA*

8 Bom. Cr., 63

10. ——— Conversion of goods at foreign port entrusted to be carried from and to a British Indian port.—*Stats. 19 & 18 Vict., c. 96, and 23 & 24 Vict., c. 88.*—B. entrusted with rice at M. (a port in British India) for conveyance to C. (also a port in British India), took the rice to G., a port in foreign territory, and there sold it. He was convicted at M. of criminal breach of trust as a carrier under section 407 of the Penal Code. *Held* that the Sessions Court at M. had no jurisdiction to try the offence under the Code of Criminal Procedure. *Held*, also, that no offence was committed on the high seas so as to give the Court jurisdiction under 12 and 13 Victoria, Cap. 96, extended by 23 and 24 Victoria, cap. 88. *BAFU DALDI v. QUEEN*

[I. L. R., 5 Mad., 28]

11. ——— Jurisdiction in Tributary Mehals.—*Mohurbhunj.*—*British India.*—A British subject residing in Midnapore, in Bengal, was charged before the Maharajah of Mohurbhunj with having committed the offence of defamation in Mohurbhunj in the Tributary Mehals. On an application made by the accused to the Magistrate of Midnapore, objecting to be tried by the Rajah of Mohurbhunj, the Commissioner of Cuttack, who was also Superintendent of the Tributary Mehals, directed that the case should be transferred to Midnapore and tried by the Magistrate of that district, who had the power of an Assistant Superintendent of the Tributary Mehals. The accused, while being tried, moved the High Court to set aside the proceedings at Midnapore, on the ground that the offence not having been committed within the district, the Magistrate was acting without jurisdiction. *Held* that the proceedings were without jurisdiction. *PER CUNNINGHAM, J.*—The Tributary Mehals are now, as they were in 1874, a portion of British India, which the Government of India has been pleased to exempt from the ordinary law and jurisdiction of the Courts, and to govern by means of special officials and enactments. Whatever may be the powers of Government as to Mohurbhunj, those powers do not extend

JURISDICTION OF CRIMINAL COURT —continued.

1. GENERAL JURISDICTION—continued.

Jurisdiction in Tributary Mehals—continued.

to empowering the legally constituted tribunals of a British district to follow in that district, and in the case of residents in it, any procedure, and to exercise any other jurisdiction than that created by the law. *Per PRINSEP, J.*—The territory of Mohurbhunj is a part of British India, but at present not subject to any laws not specially extended to it. The Tributary Mehals being British India, and being excluded from the operation of all the laws in force in British India, unless expressly extended to them, the orders of Government conferring powers on particular officers over criminal offences committed within those mehals are *ultra vires*. *HUSSEN MAHAPATRO v. DINOBUNDO PATRO*

[I. L. R., 7 Calo., 523: 9 C. L. R., 93]

12. ——— *Code of Criminal Procedure (Act X of 1879), s. 70.—Foreign Jurisdiction and Extradition Act (XXI of 1879), s. 9.—Beng. Regs. XII, XIII, and XIV of 1805.*—The prisoners, residents of the district of Singhbhum, a district in British India, were convicted, under section 331 of the Penal Code, at Singhbhum, of an offence committed in Mohurbhunj. *Per GARTH, C. J., PONTIFEX and MORRIS, JJ.*—The territory of Mohurbhunj is not within the limits of British India; but, under the provisions of section 9 of Act XXI of 1879, a conviction in British India for an offence committed without the limits of British India is good. *Per MITTAL, J.*—Mohurbhunj is within the limits of British India; but seeing that the Tributary Mehals constitute a "district" within the meaning of the Criminal Procedure Code, and that the Superintendent of these mehals has been vested with the powers of a Sessions Judge under an order of the Government of India, a conviction under the Penal Code (having regard to the provisions of section 70 of the Criminal Procedure Code) ought not to be set aside. *Per PRINSEP, J.*—Mohurbhunj is within the limits of British India; but the Acts which extends to British India do not extend to Mohurbhunj. The territory having been expressly placed beyond the ordinary legislation, the law in force in British India cannot come into operation there until this exemption has been removed. *EMPERESS v. KESHUB MOHAJAN. EMPRESS v. UDIT PRASAD*

[I. L. R., 8 Calo., 985: 11 C. L. R., 241]

13. ——— *Power of Indian Legislature.—Act XXII of 1869, s. 9.—Indian Councils Act.—24 & 25 Vict., c. 67, s. 23.—24 & 25 Vict., c. 104, ss. 9, 11, 13.—Delegation, Power of.*—By Act XXII of 1869 certain districts were removed from the jurisdiction of the High Court, and by section 5 the administration of civil and criminal justice was vested in such officers as the Lieutenant-Governor of Bengal should appoint. By section 9 the Lieutenant-Governor was empowered to extend all or any of the provisions of the Act to the Cossyah and Jynteah Hills. By a notification in the *Calcutta Gazette* of

JURISDICTION OF CRIMINAL COURT —continued.

1. GENERAL JURISDICTION—continued.

Power of Indian Legislature—continued.

4th October 1871, the Lieutenant-Governor extended the provisions of the Act to the Cossyah and Jynteah Hills, and directed that the Commissioner of Assam should exercise the powers of the High Court in the civil and criminal cases triable in the Courts of that district. The two prisoners were tried for murder in April 1876, and were on conviction sentenced by the Chief Commissioner of Assam to transportation for life. On appeal by the prisoners to the High Court, —*Held*, by the majority of a Full Bench (*GARTH, C. J., MACPHERSON and PONTIFEX, JJ.*, dissenting), that the High Court had jurisdiction to entertain the appeal, and such jurisdiction was not taken away by Act XXII of 1869. *Per curiam.*—The Governor General in Council had power by legislation to remove the districts from the jurisdiction of the High Court. *Per JACKSON, AINSLIE, and MARKBY, JJ.* (*KEMP, J.*, concurring).—The Governor-General in Council had no power to delegate his legislative functions to the Lieutenant-Governor of Bengal in the way he had done in Act XXII of 1869. The power of delegation cannot be considered as validated by any long course of practice, nor as sanctioned by the tacit recognition of Parliament; Act XXII of 1869 is therefore so far invalid. *Per MACPHERSON, J.* (*PONTIFEX, J.*, concurring).—Such delegation is nowhere expressly prohibited, and does not bring the Act under any of the restrictive provisions of the Indian Councils Act. *Per GARTH, C. J., and MACPHERSON, J.* (*PONTIFEX, J.*, concurring).—The power of delegation now questioned had been exercised in many cases for a series of years previous to the passing of the Indian Councils Act, and that Act (the framers of which must have been cognizant of such course of practice) must be taken as impliedly approving of and sanctioning such practice, which it would otherwise have declared illegal. *Per GARTH, C. J., JACKSON, MARKBY, and AINSLIE, JJ.* (*KEMP, J.*, concurring).—The High Court has power to question the validity of the Legislative Acts of the Governor General in Council. *Per MACPHERSON, J.* (*PONTIFEX, J.*, concurring).—The High Court has no such power if satisfied that the Act is not within any of the prohibitions of the Indian Councils Act. *EMPERESS v. BURAH*

[I. L. R., 8 Calo., 63: 1 C. L. R., 161]

Held by the Judicial Committee of the Privy Council, that the decision of the majority of the High Court was erroneous and rested on a mistaken view of the powers of the Indian Legislature. That Legislature has powers expressly limited by the Act of the Parliament which created it, but has, when acting within those limits, plenary powers of legislation as large and of the same nature as those of Parliament itself. When plenary powers of legislation exist as to particular subjects, whether in an Imperial or Provincial Legislature, they may be well exercised either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places con-

JURISDICTION OF CRIMINAL COURT —continued.

1. GENERAL JURISDICTION—continued.

Power of Indian Legislature—continued.

fidence, is not uncommon, and in many circumstances may be highly convenient. By the terms of the Act 24 and 25 Victoria, Cap. 104, the exercise of jurisdiction in any part of Her Majesty's Indian territories by the High Courts was meant to be subject to, and not exclusive of, the general legislative power of the Governor General in Council. An exercise of legislative authority by the Governor General in Council, whereby any place or territory is removed from the jurisdiction of the High Courts, is one expressly contemplated by the Statute 24 and 25 Victoria, Cap. 104, and by the Letters Patent issued under that Statute. *EMPERESS v. BURAH*

[*L. R.*, 4 Calo., 172; 3 *C. L. R.*, 197
L. R., 5 *I. A.*, 178]

14. ——— Trial by jury.—*Commissioner of Cooch Behar*.—The Commissioner of Cooch Behar had no power to hold a trial by jury in the Gawalpara district. *QUEEN v. BHAGDHON KATOHARI*

[8 *W. R.*, Cr., 58]

QUEEN v. KHOODRAM . 8 *W. R.*, Cr., 39

2. EUROPEAN BRITISH SUBJECTS.

15. ——— Sessions Court, Bellary.—*Treaty by Rajah of Sundoor with Government*.—The Sessions Court of Bellary has no jurisdiction under the Penal Code to try native subjects of the jaghir-dar, or Rajah, of Sundoor, for offences committed in the plateau of Ramandoorg upon native inhabitants of the village of Ramandoorg. Ramandoorg is a portion of the territory of Sundoor, and the Rajah is in the position of a native chief or ruler. A treaty entered into by the late Rajah of Sundoor with the Government of Madras contained the following stipulation: "It being probable that, as European officers take up their residence on the said hill, many servants, tradesmen, private persons, and others will reside there, I have relinquished to the Company's Government the police and magisterial functions of maintaining peace, and trying and punishing offences committed by such people, such as violence, petty crimes, thefts, murder, &c." The Collector is to have jurisdiction in such matters." Held that this treaty did not give the Sessions Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, namely, Europeans and their servants, and all other resident persons, not native subjects of the Rajah, and left the Government unfettered to provide in the way they deemed right for the trial and punishment of offences committed by such persons. *QUEEN v. VENOANNA*

[3 *Mad.*, 354]

16. ——— Power to legislate for European British subject in mofussil.—*Legislature, Power of*.—*Bombay Act VII of 1867 (District Police Act)*.—3 & 4 *Will. IV.*, c. 128.—53 *Geo. III.*, c. 155, s. 105.—37 *Geo. III.*, c. 122, s. 10.—Although the old East India Company had power, under the Charters

JURISDICTION OF CRIMINAL COURT —continued.

2. EUROPEAN BRITISH SUBJECTS—continued.

Power to legislate for European British subject in mofussil—continued.

of Charles II., to make laws affecting British-born subjects, yet this power ceased in A. D. 1709, when its Charters were surrendered to Queen Anne. From that date down to the passing of the 3rd and 4th William IV., Cap. 128 (with the exception of a limited power of legislating as regarded the local limits of the presidency town), no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born subjects can be found. *Semble*.—That neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the 3rd and 4th William IV., Cap. 122. With the exception of offences made punishable by the 53rd George III., Cap. 155, section 105, by Justices of the Peace, the Recorder's Court had, by virtue of the 37th George III., Cap. 142, section 10, exclusive criminal jurisdiction over British-born subjects throughout the Bombay Presidency, and the same exclusive jurisdiction was continued to the late Supreme Court, and is now exercised by the High Court, with the like exception, and some further exceptions introduced by subsequent Acts of the Government of India. The Bombay District Police Act (No. VII of 1867) passed by the Governor of Bombay in Council for making Laws and Regulations, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the mofussil, being also Justices of the Peace, over British-born subjects as it thereby affects the Acts of Parliament under which the High Court is constituted, and interferes with the criminal jurisdiction which that Court possesses over British-born subjects in the mofussil, which jurisdiction is exclusive except in so far as it is limited by Statute 53, George III., Cap. 155, section 105, and certain subsequent Acts of the Government of India. *REG. v. REAY* . . . 7 *Bom.*, Cr., 6

17. ——— Power to try European British subject.—*Criminal Procedure Code (Act X of 1872)*, ss. 71-88.—*Power of Indian Legislature*.—24 & 25 *Vict.*, c. 67 (*Indian Councils Act*), ss. 22 and 42.—A European British subject in the mofussil was convicted by a Magistrate under the provisions of Chapter VII of Act X of 1872. He appealed to the High Court on the ground (*inter alia*) that the Magistrate had no jurisdiction to try the case, inasmuch as the Governor General in Council had not the power, under 24 and 25 Victoria, Cap. 67, to subject a European British subject to any jurisdiction other than that of the High Court, and therefore the provisions of Act X of 1872, under which the prisoner had been tried, were *ultra vires* and illegal. Held that the jurisdiction of the High Court as given by the Letters Patent is subject to the legislative powers of the Governor General in Council, and, therefore, the Magistrate had jurisdiction to try the case. *QUEEN v. MEARES*

[14 *B. L. R.*, 106; 22 *W. R.*, Cr., 54]

JURISDICTION OF CRIMINAL COURT —continued.

2. EUROPEAN BRITISH SUBJECTS—con- tinued.

Power to try European British subject —continued.

18. ————— *Act X of 1872*
(*Criminal Procedure Code*), ss. 74, 83.—*B.*, who was charged before a Magistrate who was competent to enquire into a complaint against a European British subject, with an offence triable by him, claimed to be dealt with as a European British subject. *B.* did not state the grounds of such claim. The Magistrate did not decide whether *B.* was or was not a European British subject, but proceeded with the case, dealing with him as if he were not a European British subject, and sentencing him to rigorous imprisonment for one year and to a fine. On appeal by *B.*, the High Court remanded the case to the Magistrate in order that he might decide, in the manner directed by section 83 of the Criminal Procedure Code, whether *B.* was or was not a European British subject. The Magistrate having decided that *B.* was a European British subject,—*Held* that, this being so, and it appearing that the Magistrate had dealt with *B.* as other than a European British subject, *B.*'s trial was void for want of jurisdiction. *EMPERESS v. BERRILL* . I. L. R., 4 All., 141

19. ————— *European British soldier.—Jurisdiction of Military authorities.—Beng. Regs. XX of 1826 and XIII of 1833.—4 Geo. IV., c. 81.*—A British-born European soldier in a regiment stationed at Hazaribagh was committed by the Deputy Commissioner of that place to the High Court on a charge of the murder of a comrade. Upon an application to have the commitment quashed and the prisoner handed over to the Military authorities in accordance with Regulation XX of 1826, it was held that the provisions of Regulation XX of 1826 as to the course to be taken in dealing with European British subjects who have committed offences were rescinded in Hazaribagh by Regulation XIII of 1833, section 3, as being rules for the administration of criminal justice within the meaning of that section. Assuming the regulation was in force,—*Held* that 4 George IV., Cap. 81, and Regulation XX of 1826, though they gave jurisdiction to the Military authorities in certain cases, did not wholly exclude the jurisdiction of the Civil as opposed to the Military Courts, and that inasmuch as the proceedings before the Deputy Commissioner had been taken at the request of the Military authorities and assented to by them, such proceedings were not void and the commitment was valid. *QUEEN v. JACKSON* . 18 B. L. R., 474; 22 W. R., 20

20. ————— *Mutiny Act, s. 101.*
—*Offence committed by British soldier.*—Section 101 of the Mutiny Act does not deprive the Civil (as opposed to Military) Courts of jurisdiction over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. The section is merely

JURISDICTION OF CRIMINAL COURT —continued.

2. EUROPEAN BRITISH SUBJECTS—con- tinued.

Power to try European British subject —continued.

permissive of a military trial being held. *EMPERESS v. MAGUIRE*
[I. L. R., 5 Cal., 124; 4 C. L. R., 432]

21. ————— *Proof of status.—*
Question of fact.—Whether or not an accused is a European British subject is a matter of fact to be determined judicially by the Court of Session on the evidence, in the event of the prisoner raising that question. *QUEEN v. PARKS* . 10 W. R., Cr., 6

22. ————— *Proof of status.—*
The prisoner pleaded that he was a British-born subject, and therefore not amenable to the jurisdiction of the Sessions Judge of Tellichery, by whom the prisoner had been convicted of criminal misappropriation. The evidence showed that the prisoner was the legitimate great-grandson of John Turnbull, said to have been a sergeant in the service of the King or of the East India Company, but was insufficient to establish a lawful marriage between him and a native Christian woman by whom he had a son, and the evidence as to his nationality was also incomplete. *Held* that the plea to the jurisdiction was not made out. *QUEEN v. TURNBULL* . 6 Mad., 7

23. ————— *Court of Magistrates of Tellichery.*—The Joint Magistrate of Tellichery has no jurisdiction to try a resident of Mysore for criminal acts done in Mysore. *ANONYMOUS CASE* [6 Mad., Ap., 3]

24. ————— *Offences committed within the territories of Native Prince in alliance with Government.*—The defendant, a European British subject, was charged with having committed three offences at Bangalore, punishable under the Penal Code. *Held* that the High Court has the same criminal jurisdiction which the late Supreme Court had, and that Bangalore being within the territories of the Maharajah of Mysore, a Native Prince in alliance with the Government of Madras, the defendant was subject to the jurisdiction of the High Court in respect of criminal offences committed in the territory of Mysore. *REG. OF THE PROSECUTION OF SHALLARD v. WATKINS* . 2 Mad., 444

25. ————— *Madras Police Act, XXIV of 1859, s. 49.*—A European British subject was convicted by the Cantonment Magistrate under section 48 of the Police Act (Act XXIV of 1859). *Held* that the Magistrate had no jurisdiction. *ANONYMOUS CASE* . 5 Mad., Ap., 25

26. ————— *Judicial Commissioner of Mysore.*—A European British subject committed by a Justice of the Peace in Mysore for trial by the Judicial Commissioner of Mysore on a charge under section 348 of the Penal Code was convicted on 10th March 1880. *Held* that the commitment and conviction were illegal. *Quare,—*

JURISDICTION OF CRIMINAL COURT

—continued.

2. EUROPEAN BRITISH SUBJECTS—continued.**Power to try European British subject—continued.**

Whether when a European British subject in Mysore, being a Christian, is accused of an offence not punishable with death or transportation for life, a commitment to the High Court at Madras would be legal. *WARD v. QUEEN*. I. L. R., 5 Mad., 33

27. ————— *Justice of the Peace.*—*Illegal conviction.*—Where a Magistrate, being also a Justice of the Peace, convicted a British-born subject of mischief under section 426 of the Penal Code, the High Court annulled the conviction and sentence, and directed the accused to be committed to take his trial before the High Court, unless the complainant withdrew the charge, under section 271 of the Criminal Procedure Code. *REG. v. WELLS*. 7 Bom., Cr., 1

28. ————— *Officer invested with special powers.*—Sections 30, 34, and 209, Code of Criminal Procedure (Act X of 1852).—An officer invested with special powers under section 35 of the Code of Criminal Procedure should rarely, if ever, try a case himself under section 209 of the Code of Criminal Procedure, where it appears from some of the evidence that the accused might have been charged with an offence beyond the jurisdiction of the Magistrate to take cognisance of. *EMPERESS v. PARAMANANDA*

[I. L. R., 10 Cal., 85: 13 C. L. R., 375]

3. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT.**(a) GENERALLY.**

29. ————— *Offence begun in one place and completed in another.*—*Stat. 9 Geo. IV., c. 74, s. 56.*—Section 56 of the Statute 9 George IV., Cap. 74 (applying and extending to the British territories in India the provisions then recently made for England with respect to offences committed in two different places or partially committed in one place and accomplished in another) applies only to the cases of persons amenable to the Supreme Court at Calcutta beginning to commit offences in one place which are afterwards completed in another, and not to a case where the persons committing the offence were not amenable to the said Court, and where the whole offence which has been committed was within one jurisdiction. The term "within the limits of the Charter of the said United Company," construed to mean within the limits of the Trading Charter of the East India Company. *NEA HOONG v. QUEEN* [4 W. R., P. C., 109: 7 Moore's I. A., 73]

30. ————— *Offence committed in British territory, instigated by foreign subject resident in foreign territory.*—*Criminal Procedure Code, 1872, s. 66.*—Where a foreign subject, resident in foreign territory, instigated the commission of an offence which, in conse-

JURISDICTION OF CRIMINAL COURT

—continued.

3. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.**(a) GENERALLY—continued.****Offence committed in British territory, instigated by foreign subject resident in foreign territory—continued.**

quence, was committed in British territory.—*Held* that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code, section 66. *REG. v. PRETAL*. 10 Bom., 356

31. ————— *Acts done partly within and partly without British territories.*—*Offence under Penal Code.*—A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territories in India, provided they amount to an offence under the Penal Code. *QUEEN v. AHMED-ODOLAH*. 2 W. R., Cr., 80

(b) ABETMENT OF WAGING WAR.

32. ————— *Charge of abetment of waging war against the Queen.*—*Offence committed in Calcutta tried at Patna.*—Where the prisoner was charged with having, at Calcutta, abetted the waging of war against the Queen, and was tried at the Sessions Court of Patna, it was held that the Court of Session at Patna had jurisdiction to try him, because he was a member of a conspiracy, other members of which had done acts within the district of Patna in pursuance of the original concerted plan, and with reference to the common object. The Court of Patna had jurisdiction also, because the prisoner had sent money from Calcutta to Patna by hundis, and, until that money reached its destination, the sending continued on the part of the prisoner. *QUEEN v. AMBER KHAN*

[9 B. L. R., 36: 17 W. R., Cr., 15]

(c) ADULTERATION.

33. ————— *Adulteration of cotton.*—*Possession of cotton adulterated in foreign territory.*—*Cotton Frauds Act, ss. 6 and 14.*—Cotton supposed to have been adulterated in foreign territory was seized in British territory. *Held* that the Magistrate of the place where the cotton was seized had jurisdiction to try the offender, as the effect of the new Cotton Frauds Act (Bombay), No. VII of 1878, sections 6 and 14, was to make the possession of "cotton liable to confiscation" punishable with fine, and it is immaterial where the adulteration takes place. *EMPERESS v. KHAMCHAND NARAYAN*

[I. L. R., 3 Bom., 384]

(d) CRIMINAL BREACH OF CONTRACT.

34. ————— *Contract made in foreign territory to be performed in British territory.*—*Breach.*—*Arrest in foreign territory.*—*Act*

JURISDICTION OF CRIMINAL COURT —continued.

3. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

(d) CRIMINAL BREACH OF CONTRACT—continued.

Contract made in foreign territory to be performed in British territory—continued.

XIII of 1859.—*B.* having contracted in foreign territory to labour for *S.* in British territory, broke his contract. He was arrested in foreign territory, brought into British territory, prosecuted under Act *XIII of 1859*, and ordered to perform the contract. Held that the Court had no jurisdiction. *SIDDHA v. BILIGIRI* . . . I. L. R., 7 Mad., 354

(e) DACOITY.

35. ———— *Dacoity committed out of British territory.*—*Concealment of property in British territory.*—*Criminal Procedure Code, 1872, s. 67.*—Where dacoity was committed at Velanpor, a village in the territory of His Highness the Gayakwad, and a part of the stolen property found where it had been concealed by the accused in British territory, it was held that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor; although, had Velanpor been in British territory, the subsequent acts in the process of taking away the property might, in the legal sense, have coalesced with the first and principal one so as to give jurisdiction under section 67 of the Code of Criminal Procedure in each district into which the property was conveyed. But on a conviction of retaining stolen property, the sentences awarded could, it was held, be sustained, the retaining having taken place in British territory. *REG. v. LAKHYA GOVIND*

[I. L. R., 1 Bom., 50]

(f) EMIGRANTS, RECRUITING UNDER FALSE PRETENCES.

36. ———— *Place where false pretences were held out.*—*Jurisdiction to try recruiters of emigrants under s. 71, Act XIII of 1864.*—Recruiters of emigrants charged under section 71, Act *XIII of 1864*, must be tried by the Magistrate within whose jurisdiction the holding out of false pretences to the labourers took place. *ANONYMOUS*

[4 Mad., Ap., 4]

(g) ESCAPE FROM CUSTODY.

37. ———— *Place of trial.*—*District in which escape took place.*—A convict escaping from custody must be tried for that offence in the district within which he escaped: a Magistrate of another district has no jurisdiction to try him for the offence. *REG. v. DOSSA SERA* . . . 1 Bom., 139

(h) MURDER.

38. ———— *Offence committed in Cyprus.*—*Foreign Jurisdiction and Extradition Act*

JURISDICTION OF CRIMINAL COURT —continued.

3. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

(h) MURDER—continued.

Offence committed in Cyprus—continued.

(*XI of 1872*), ss. 8, 9.—*Liability of Native Indian British subject for offence committed in Cyprus.*—“Native State.”—*Legislative powers of Governor General in Council.*—*Confirmation of sentence of death.*—*Division Court.*—*Full Court.*—Held (*STUART, C. J.*, dissenting) that a Native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus, while on service in such army, and who was accused of such offence at Agra, might, under section 9 of Act *XI of 1872*, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a “Native State,” in reference to Native Indian subjects of Her Majesty, within the meaning of that Act. *Per STUART, C. J.*—The power of the Governor General of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed. A Division Court of the High Court ordered the Magistrate who had refused to enquire into a charge of murder, on the ground that he had no jurisdiction, to enquire into such charge, considering that the Magistrate had jurisdiction to make such enquiry. The Magistrate enquired into the charge and committed the accused person for trial. The Court of Session convicted the accused person on the charge and sentenced him to death. The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court. Held, *per STUART, C. J.*, SPANKIE, J., and OLDFIELD, J., that in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division Court from considering whether the accused person had been convicted by a Court of competent jurisdiction. *EMPERESS OF INDIA v. SARMUKH SINGH*

[I. L. R., 2 All., 218]

39. ———— *Murder committed in Island of Perim.*—*Criminal Procedure Code, 1882, s. 7.*—*Law in force at Perim.*—*Aden, Jurisdiction of Court of Political Resident at.*—*Act II of 1864, s. 29.*—*Appeal from sentence of Political Resident at Aden to High Court of Bombay in criminal case arising at Perim.*—Held that the Island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Statute, 21 and 22 Victoria, Cap. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September 1858. The Penal Code (*XLV of 1860*) and the Code of Criminal Procedure (*X of 1882*) extend in their entirety to the whole of British India, and, therefore, to the Island of Perim. Section 7 of the Criminal Procedure Code (*X of 1882*) gives to the Local Government the power to alter the local limits of Sessions Divisions, and continues the Divisions

JURISDICTION OF CRIMINAL COURT —continued.

3. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

(A) MURDER—continued.

Murder committed in Island of Perim —continued.

existing when that Code came into force. A notification was issued by the Government of Bombay on the 6th May 1884 under the above section including the Island of Perim within the Sessions Division or District of Aden, and empowering the officer from time to time commanding the troops stationed at Perim, in virtue of his office, to exercise the powers of a Magistrate of the second class within the island, and to commit persons for trial to the Court of Sessions at Aden. *Held*, having regard to the language of Act II of 1864, that, for the purposes of section 7 of the Criminal Procedure Code (X of 1882), the Resident's Court at Aden might be considered as a Court of Session, and that the local area to which Act II of 1864 applied was the Sessions Division which was in existence at the date of the above notification when the limits thereof were altered by the inclusion of the Island of Perim. A prisoner charged with having committed murder in the Island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death he appealed to the High Court of Bombay. By the Aden Act II of 1864, section 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the Island of Perim. *QUEEN-EMRESS v. MANGAL TEKCHAND*. I. L. R., 10 Bom., 258

In a subsequent stage of the same case,—*Held*, notwithstanding the notification of the Government of Bombay (No. 2336), dated the 6th May 1884, including the Island of Perim within the Sessions Division and District of Aden and empowering the officer in command of the troops stationed at Perim to commit persons for trial to the Court of Sessions at Aden, that the Court of the Political Resident at Aden had no jurisdiction over the Island of Perim, and that the Political Resident at Aden was not a Judge of a Court of Session for that island. Where, therefore, a person charged with having committed murder at Perim was committed by the Magistrate at Perim for trial in the Court of the Political Resident at Aden, where he was convicted and sentenced to death, the conviction was annulled, and the prisoner was ordered to be re-tried before a Court of competent jurisdiction. The Island of Perim, although under the control of the Political Resident at Aden, cannot be regarded as part of Aden, and the provisions of the Aden Act (II of 1864) are not in force at Perim. Act II of 1864 did not create a separate Court of Session at Aden. The Court created was the Court of the Resident, and the powers of that Court and of a Court of Session are not commensurate. *QUEEN-EMRESS v. MANGAL TEKCHAND*. I. L. R., 10 Bom., 263

JURISDICTION OF CRIMINAL COURT —continued.

3. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

(4) RECEIVING STOLEN PROPERTY.

40. ——— Receiving outside British territory.—*Criminal Procedure Code, 1861, s. 81. —Subject of foreign State.—Offence committed out of British territory.*—Section 81 of the Criminal Procedure Code does not confer jurisdiction upon a Magistrate to try a subject of a foreign State for "receiving stolen property," when the offence of receiving such property has been committed outside the British territories. *REG. v. BROHAR MAVA*

[4 Bom., Cr., 38]

41. ——— Property stolen in one place and received at another.—To make it legal to punish at Patna a prisoner committed in Calcutta on a charge of receiving stolen property, it must be shown that the property was stolen at Patna. *QUEEN v. GHASOO KHAN*. 5 W. R., Cr., 49

42. ——— Receiving and retaining stolen goods within jurisdiction where the theft was committed out of jurisdiction.—*Penal Code, ss. 410 and 411.—Commission to take evidence, Power of High Court to grant, on application of prisoner.*—The prisoner was tried at Bombay, under section 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under sections 108 (explanation 3) and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the Island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission agent at Bombay were abstracted from the post office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs26,550. On the 1st November 1879, the prisoner sent all six bills of exchange in a letter to the manager of a bank at Bombay, requesting that the several amounts might be collected on the prisoner's own account, and remitted to him by bills on Mauritius. The sums were accordingly realised by the bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner was convicted on all the charges; but, the jurisdiction of the Court having been challenged on his behalf, the question was reserved. *Held, per SARGENT and MELVILLE, JJ. (WEST, J., dissentiente)*, that the bills of exchange having been stolen at Mauritius, in which island the Penal Code is not in force, could not be regarded as "stolen property" within the provisions of section 410, so as to render the person receiving them at Bombay liable under section 411; that the High Court of Bombay had, therefore, no jurisdiction, and that the conviction must be quashed. *EMRESS v. MOORGA CHETTY*

[I. L. R., 5 Bom., 338]

5 A

JURISDICTION OF CRIMINAL COURT

—continued.

**3. OFFENCES COMMITTED ONLY PARTLY
IN ONE DISTRICT—continued.****(j) THEFT.**

43. ——— Theft out of British territory.—*Criminal Procedure Code, 1872, s. 67.*—The accused stole property in foreign territory and was apprehended with it in his possession in a district in British territory. *Held* that section 67 of Act X of 1872 did not give the Courts of such district jurisdiction to try the prisoner for the theft. *REG. v. ADIVIGADU* . *I. L. R., 1 Mad., 171*

44. ——— Dishonestly retaining in British territory property stolen beyond British territory.—*Criminal Procedure Code, 1872, s. 66.*—A Nepalese subject, having stolen cattle in Nepal, brought them into British territory, where he was arrested and sentenced to one year's rigorous imprisonment. *Held* that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property. *EMPERESS v. SUNKER GOPH*
[*I. L. R., 6 Calo., 307; 7 C. L. R., 411*

45. ——— Theft in dwelling-house.—*Violation of conditions of remission of punishment.*—*Penal Code, s. 227.*—A person convicted by the Recorder's Court of Prince of Wales's Island, Singapore, and Malacca, of the crime of burglary and sentenced to transportation for ten years, at a place to be appointed by the Governor General of India in Council, was released from the Ratnagiri Jail on a ticket-of-leave after having been in confinement for more than eight years. At Karodar he committed theft in a dwelling-house before his sentence had expired. *Held* that the full-power Magistrate at Karwar had jurisdiction to try the convict for the offence of violation of the condition of remission of punishment under section 227, Penal Code. *REG. v. AKONG* *9 Bom., 356*

46. ——— Theft where property is found out of jurisdiction.—*Jurisdiction of Courts in British India over offences committed out of British India.*—*Rajkot, Civil Court at.*—*Stat. 21 & 22 Vict., c. 106.*—*Penal Code, ss. 381, 410, 411.*—The civil station at Rajkot is not part of British India within the meaning of Statute 21 and 22 Victoria, Cap. 106. Where the accused, a subject of a Native State, committed theft at Rajkot Civil Station, and was found in possession of the stolen property at Thana, *Held* that, as the offence was not committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thana had no jurisdiction to try the accused for theft under section 381 of the Penal Code. But it was competent to try him for dishonest retention of stolen property under section 410 of the Penal Code as amended by Act VIII of 1882. *QUEEN-EMPERESS v. ABDUL LATIF VALAD ABDUL RAHMAN*
[*I. L. R., 10 Bom., 186*

JURISDICTION OF CRIMINAL COURT

—continued.

**4. OFFENCES COMMITTED DURING
JOURNEY.**

48. ——— Offence under Railway Act, 1862.—*Dismissal outside jurisdiction of.*—*Guard of train afterwards coming into jurisdiction.*—The High Court has no jurisdiction to try a prisoner charged with drunkenness while as guard or under-guard in charge of a railway train where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras. *QUEEN ON THE PROSECUTION OF THE MADRAS RAILWAY COMPANY v. MALONY. QUEEN ON THE PROSECUTION OF THE MADRAS RAILWAY COMPANY v. JONES* . . . *1 Mad., 193*

49. ——— Offence committed on interrupted journey.—*Criminal Procedure Code, (Act X of 1872), s. 67, III. (a).*—Where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Calcutta by different trains, *Held* that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction, the journey should have been continuous from one terminus to the other without any interruption by either party. *QUEEN v. PIRAN*
[*13 B. L. R., Ap., 4*

S. C. PHEERUN alias KUREEMUN AYAH v. FIELD
[*21 W. R., Cr., 66*

50. ——— Theft of box during journey.—*Criminal Procedure Code, 1872, s. 67.*—A box containing money having been missed during a halt at Sumbhoogunge, from a boat which was on the way to Chittagong, and a question having been raised whether the charge of theft which was based on the loss should be tried at Tipperah or Chittagong, *Held* that the journey was not broken by the halt, and that, under section 67, Criminal Procedure Code, the case could be tried at Chittagong. *QUEEN v. ABDUL ALI* *25 W. R., Cr., 45*

JURISDICTION OF REVENUE COURT.

Col.

1. BOMBAY REGULATIONS AND ACTS . . . 2913
2. MADRAS REGULATIONS AND ACTS . . . 2914
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See ABATEMENT OF RENT.

[*1 B. L. R., A. C., 87*See INTEREST—MISCELLANEOUS CASES—MISSE PROFITS . *I. L. R., 1 All., 261*

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES.

See MADRAS RENT RECOVERY ACT, VIII OF 1865 . *I. L. R., 1 Mad., 389*

JURISDICTION OF REVENUE COURT —continued.

See CASES UNDER RRS JUDICATA—COMPETENT COURT—REVENUE COURTS.

1. BOMBAY REGULATIONS AND ACTS.

1. ——— Collector of Bombay.—*Bom. Reg. XIX of 1827, s. 2.*—The Revenue Court, under section 2 of Regulation XIX of 1827, had not exclusive jurisdiction over the Collector of Bombay for all acts done by him in his official capacity. *NARAYAN KRISHNA LAUD v. NORMAN*

[5 Bom., O. C., 1

2. ——— Suit for rent.—*Suit under Bom. Reg. XVII of 1827, s. 81, cl. 3.—Act XVI of 1838, s. 1, cl. 1.*—In a suit to recover rent in a Revenue Court, under Regulation XVII of 1827, section 81, clause 3,—*Held* that the proper questions to determine were whether the defendant occupied the land as tenant of the plaintiff during the period alleged, and if so, what rent was due; and that a defendant so sued could not deprive the Court of jurisdiction by setting up a title in himself, nor did the suit by such defence become one “in which the right to possession of land is claimed” within the meaning of section 1, clause 1 of Act XVI of 1838. *BAI MAHALAKSHMI v. AUDHART KESHAYRAM NARASIRAM* . . . 2 Bom., 193: 2nd Ed., 185

3. ——— Assignment by mortgages.—*Redemption.—Suit for rent by assignee.*—Where a mortgagee had assigned his interest, and agreed to pay rent to the assignee, and subsequently permitted the mortgagor to redeem,—*Held* that a suit for rent could not be maintained in the Revenue Courts by the assignee against the mortgagor, as the relation of landlord and tenant never existed between them, nor against the representatives of the mortgagee, after they ceased to be in occupation of the land, but that the assignee should proceed under the assignment in the Adawlut Courts. *BHAU BABAJI GHOLAP v. GOPAL* . . . 2 Bom., 183

4. ——— Mamlatdar's order under Bombay Act V of 1864.—*Possession.—Act XVI of 1838, s. 1, cl. 2.—Questions of title.—Civil Courts, Jurisdiction of.*—A Mamlatdar's order under Bombay Act V of 1864 is not conclusive evidence of the facts of possession and dispossession between the parties. Section 1 of that Act gives to Mamlatdar's Courts jurisdiction in case of dispossession within six months from the date of such dispossession, and relates to immediate possession; and under section 15, the party to whom such immediate possession is given by the Mamlatdar, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court. The power reserved to the Revenue Courts by section 1, clause 2, of Act XVI of 1838, to determine the facts of possession and dispossession, was so reserved merely for the temporary purpose of enabling those Courts to dispose of the immediate possession, which was to continue until the Civil Court ejected the party put into such immediate possession. The purpose of Act XVI of 1838, as that of Bombay Act V of 1864,

JURISDICTION OF REVENUE COURT —continued.

1. BOMBAY REGULATIONS AND ACTS —continued.

Mamlatdar's order under Bombay Act V of 1864—continued.

was temporary only, and chiefly to provide for the cultivation of the land and to prevent breaches of the peace until the Civil Court should determine the rights of the disputants. The decisions of the Revenue and the Mamlatdar's Courts as to possession and dispossession do not bind the Civil Courts, the proceedings in the former Courts being of a summary character. The Civil Courts alone can entertain the question of title. *BASAPA BIN MURTIAPA v. LAKSHMAPA BIN MARITAMAPA* . I. L. R., 1 Bom., 624

2. MADRAS REGULATIONS AND ACTS.

5. ——— Suit for rent of land.—*Madras Act VIII of 1865.—Power of Head Assistant Collector.—Act XI of 1865.*—At the date of the enactment of Act XI of 1865, suits for rent of land could not be entertained by the Revenue officers of this presidency, so as to bar the cognisance of suits by the Small Cause Court. Madras Act VIII of 1865, equally with the prior enactments, abstains from authorising the cognisance by the Revenue authorities of suits for arrears of rent. The cognisance of such a suit by a Head Assistant Collector is a proceeding *coram non judice*. *GAURI ANONTHA PARATHESI alias SATTHAPPAIYAN v. KALIAPPA SETT*

[3 Mad., 213

6. ——— Suit for possession of land after wrongful ejectment.—*Madras Act VIII of 1865, s. 12.*—Plaintiffs sued under section 12 of Madras Act VIII of 1865, to be reinstated in the possession of certain lands from which they alleged they had been wrongfully ejected by the defendant, a zemindar. Defendant pleaded that the suit was not maintainable as the lands in question formed part of his “panai” lands and were not a part of his zemindari. *Held* that the suit was maintainable before the Revenue authorities under section 12, Madras Act VIII of 1865. *NAGAYASAMI KAMAYA NAIK (ZEMINDAR OF SAPTUR) v. PANDYA TEVAR*

[7 Mad., 53

3. N.-W. P. RENT AND REVENUE CASES.

7. ——— Nature of defence.—*Effect of, on jurisdiction of Court.*—The jurisdiction of a Revenue Court under the Rent Act, 1859, was not affected by the nature of the defence set up. *DOYAL CHUNDER GHOSH v. DWARKANATH MITTHER*

[W. R., F. B., 47: Marsh., 148
1 Ind. Jur., O. S., 41: 1 Hay, 347

CHUNDER KOOMAR MUNDUL v. BAKER ALI KHAN
[9 W. R., 598

8. ——— Denial of relation of landlord and tenant.—*Issue as to relationship of landlord and tenant existing or not.*—If in a suit brought in the Revenue Court on an allegation of the existence of the relation of landlord and tenant

JURISDICTION OF REVENUE COURT —continued.

3. N.-W. P. RENT AND REVENUE CASES —continued.

Denial of relation of landlord and tenant —continued.

that relation is denied by the defendant, the Court (instead of declining jurisdiction by reason of that denial) should judicially determine the fact, and take jurisdiction or not according to the result.

HURSH PERSAD MALEH v. KOONJO BEHARY SHAHA
[W. R., F. B., 29: 1 Ind. Jur., O. S., 20
Marsh., 99: 1 Hay, 236

KALLER SINGH v. MOORLEE RAM . 1 W. R., 135

SANDES v. SUROOP CHUNDER BISWAS
[2 W. R., Act X, 11

NUERUN BEEH v. WATSON . 3 W. R., 215

POORNO DOSS v. OOOODHIAPRODAD
[3 W. R., Act X, 16

9. ——— Questions of title.—*Jurisdiction of Civil Court.*—It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts. JUGUT SHOBHUN CHUNDER *alias* DOOLAL CHUNDER. DEHINGUR GOSSAMEY v. BINAUD CHUNDER *alias* SODA SHOBHUN CHUNDER DEHINGUR GOSSAMEY . I. L. R., 9 Calc., 925

10. ——— Boundary question.—The Revenue Courts have no jurisdiction to decide a boundary question between two estates. A landlord must first obtain a declaration in the Civil Court that the land in dispute is within the limits of his estate, after which he may proceed to assess revenue upon it in the usual course under Act X of 1859. AMINA v. RAMKAN ALI

[W. R., 1864, Act X, 116

RUGHONATH SAHOY v. BOONDIE MUNDIE
[1 W. R., 36

11. ——— Plea of proprietary title.—*Held* that where a proprietary title is pleaded in respect to land whereof rent is claimed, it can be adjudicated upon by the Revenue authorities, who, so far from being prevented by law from taking cognisance of such pleas, are competent to dispose of all such pleas when raised in bar of a claim for rent, as is evident from section 153, Act X of 1859. KASHI RAM v. MENDER SINGH
[2 Agra, Rev., 8

12. ——— Question of title incidentally raised.—*Suit for rent.*—In cases in which the determination of title is incidental to the decision of suits properly brought in the Revenue Court, that Court is bound to enquire into the title. Where a person ostensibly in possession as proprietor institutes a suit for rent, and the alleged tenant pleads that he is in possession as a proprietor, the Revenue Court is bound to raise and decide the issue respecting title. RAMGUT SINGH v. RAM SARUN SINGH . . . 3 N. W., 141

JURISDICTION OF REVENUE COURT —continued.

3. N.-W. P. RENT AND REVENUE CASES —continued.

13. ——— Landlord and tenant.—*N.-W. P. Rent Act, XVIII of 1873, s. 4.—Determination of status of tenant.—Order for ejectment.*—In a suit for a declaration that the defendant holds an estate paying revenue to Government as a manager subject to ejectment at will, and for ejectment, if the relationship of landholder and tenant between the parties be established, then the Revenue Court only can make an order for the defendant's ejectment, or for determining the nature and class of his tenure,—that is to say, whether he is a tenant at fixed rates within the meaning of section 4 of Act XVIII of 1873, or an ex-proprietary tenant, or an occupancy tenant, or a tenant without a right of occupancy. MUHAMMAD ABU JOFAR v. WALI MUHAMMAD . . . I. L. R., 3 All., 81

14. ——— Status of cultivator.—*Suit for enhancement.—Plea that defendant is proprietor.—Act X of 1859, s. 153.*—The Revenue Court has jurisdiction to try the question whether the defendant in a suit for enhancement of rent, though recorded as cultivator, was on the footing of a proprietor, and had held the land on payment of revenue rate; there being nothing in the law to bar the adjudication of such a plea. KAISUR v. PUT RAM
[2 Agra, Pt. II, 212

15. ——— Application for partition of orchards.—*Act XIX of 1863.*—An application for partition of orchards not liable for a quota of the village assessment was not one cognisable by the Revenue Court under Act XIX of 1863 but by the Civil Court. OODEY RAM v. SIRAJOOOL HUSSUN
[2 Agra, 241

16. ——— Suit to make up deficiency of *air land.*—*Suit for partition and separation of share.*—*Held* that a suit to make up the deficiency of *air land* of one putti with another putti of a joint undivided estate was not cognisable by the Civil Court, the remedy of the plaintiff being by a revenue suit for partition and separation of his share. GOLAM GHOU v. FURRED ALUM
[1 Agra, 246

17. ——— Suit for ejectment and for mesne profits against tenant.—*Jurisdiction of Civil Court.*—If a landholder desires to eject a tenant, holding only for a limited period, after the determination of his tenancy, he can proceed only in the Revenue Court, and in that Court by application and after notice and not by suit, and the circumstance that a claim for mesne profits is added to the claim for ouster does not give the Civil Court jurisdiction in such cases. RAM AUTAR RAI v. TALIM-UNDI KUAR . . . 7 N. W., 49

18. ——— Suit to determine rate of rent.—*Application.—Ex-proprietary tenant.*—A Revenue Court cannot entertain a suit to determine the rate of rent payable by an ex-proprietary tenant, but an application only. PHULAHRA v. JEOLAL SINGH
[I. L. R., 6 All., 52

JURISDICTION OF REVENUE COURT —continued.

3. N.-W. P. RENT AND REVENUE CASES —continued.

19. ——— Suit for arrears of rent in kind.—*N.-W. P. Rent Act (XVIII of 1873), s. 98.*—*Bhouli.*—*Held* (PEARSON, J., dissenting) that a suit for the money-equivalent of arrears of rent payable in kind is a suit for arrears of rent within the meaning of section 93 of Act XVIII of 1873, and therefore cognisable by a Revenue Court. *Per* PEARSON, J.—Such a suit, being a suit for damages for a breach of contract, is cognisable by a Civil Court. *TAJ-UD-DIN KHAN v. RAM PARSAD BHAGAT*

[I. L. R., 1 All., 217]

20. ——— Suit partly cognisable in Revenue Court and partly in Civil Court.—*N.-W. P. Rent Act (XII of 1881), ss. 206, 207.*—A co-sharer sued in a Court of Revenue (i) for his share of the profits of a mehal and (ii) for money payable to him for money paid for the defendant on account of Government revenue. An objection was taken in the Court of first instance that the suit, as regards the second claim, was not cognisable in a Court of Revenue. The lower Appellate Court allowed the objection, and dismissed the suit as regards such claim, on the ground that the Court of first instance had no jurisdiction to try it. *Held* that the objection being in effect “an objection that the suit was instituted in the wrong Court,” within the meaning of sections 206 and 207 of Act XII of 1881, the defect of jurisdiction was cured by those sections, and the procedure prescribed in section 207 should have been followed. *LACHMI NARAIN v. BHAWANI DIN*

[I. L. R., 4 All., 379]

21. ——— *Act XII of 1881 (N.-W. P. Rent Act), ss. 206, 207.*—A suit was instituted in a Court of Revenue which was partly cognisable in the Civil Courts: *held*, on the question raised on appeal, whether the Revenue Court had jurisdiction to entertain the suit, that the provisions of sections 206 and 207 of the Rent Act (North-Western Provinces), 1881, rendered the plea in respect of jurisdiction ineffective. *BADINATH v. BHAJAN LAL*

[I. L. R., 5 All., 191]

22. ——— Suit for arrears of malikana.—*Jurisdiction of Civil Court.*—Suits for arrears of Malikana are cognisable by Revenue not by Civil Courts. *RAM CHURUN v. GUNGA PERSHAD*

[2 N. W., 228]

23. ——— Suit by mortgagor for profits.—*Act XIV of 1863.*—Where a mortgagor obtaining possession of the mortgaged property by redemption sued the mortgagee for the profits of certain years as due to him by the latter,—*Held* that the question being not between co-sharers, but between mortgagor and mortgagee, was not cognisable by the Revenue Court under Act XIV of 1863. *PRATM SOOKH v. ABBAS ALY*

2 Agra, Rev., 4

24. ——— Suit by lumberdar for share of profits.—*Suit against lumberdar.*—A suit by a lumberdar for his share of the profits against another

JURISDICTION OF REVENUE COURT —continued.

3. N.-W. P. RENT AND REVENUE CASES —continued.

Suit by lumberdar for share of profits—*continued.*

lumberdar is cognisable by the Revenue Courts. *MOHAMED GHOU v. KURRUMMOONISSA*

[1 Agra, Rev., 52]

25. ——— Suit for profits taken by lumberdar as mortgagee.—*Jurisdiction of Civil Court.*—Where profits received by a lumberdar are not taken by him as lumberdar, but in his individual character under a supposed mortgage title, such profits are not recoverable by a suit for profits in the Revenue Court. *KHOOB SINGH v. BULWANT SINGH*

[2 Agra, 802]

26. ——— Suit against lumberdar for profits.—*Jurisdiction of Civil Court.*—A lumberdar is not chargeable in the Revenue Court in respect of profits payable at a time prior to his appointment, although he succeeded his father in the office. His liability in such a case, if any exists, arises not by reason of his official character, but as one of his father's heirs and representing his estate, and the suit must be brought in the Civil and not in the Revenue Court. *MATA DEEN v. CHUNDER DEEN*

[2 N. W., 54]

See *MATA DEEN DOOREY v. CHUNDER DEEN DOOREY*

6 N. W., 118

27. ——— *Act XIV of 1863, s. 1, cl. 2.*—A suit lies in the Revenue Court under clause 2 of section 1 of Act XIV of 1863 for a share of profits against the lumberdar, although plaintiff collects her own rents, and pays in separately her quota of the Government revenue. *SALAMUT BIBER v. BHUGWAN DOSS*

2 N. W., 33

28. ——— Suits by co-sharers for share of profits.—*Act XIV of 1863, s. 1, cl. 2.*—*Suits by lumberdar.*—Construction of clause 2, section 1, of Act XIV of 1863. Suits by co-sharers against co-sharers, who are not lumberdars; for a share of the profits, are cognisable in the Revenue Courts. Such suits may also be brought against co-sharers who, without authority, have made collections in excess of their proper shares. Suits for the profits of a masafee, as well as of a khalsa estate, are so cognisable. A lumberdar can maintain a suit in the Revenue Courts for his lumberdaree allowance, as well as for his ordinary profits as a co-sharer. *HUE NARAIN v. SHIAM SOONDER*

[1 N. W., 211: Ed. 1873, 264:]

S.I.C. Agra, F. R., Ed. 1874, 188

29. ——— *Possession.*—Where certain sharers took in lieu of their proportion of profits a piece of land rent-free, with an agreement that on relinquishing the land they might claim their share of the profits, it was held that they could not be said to have been at any time out of possession of their shares so long as they held the land, and that on relinquishing the land they might sue

JURISDICTION OF REVENUE COURT

—continued.

3. N.-W. P. RENT AND REVENUE CASES

—continued.

Suits by co-sharers for share of profits

—continued.

for profits in the Revenue Court. *SHETUL SINGH v. LUCHMUN SINGH* . . . 3 N. W., 23

30. ——— Suit by ex-co-sharer for share of profits.—*Possession*.—An ex-co-sharer may sue in the Revenue Court for his share of the profits during the time he was in possession. *HUZ NARAIN v. SHIAM SOONDER* . . . 3 N. W., 112

31. ——— Suit to determine obligation of plaintiff to contribute to revenue on alluvial lands and right to share in profits. —Where the possession of the plaintiff in a share in a village is admitted, the Revenue Courts have jurisdiction to try a suit brought to determine whether the plaintiff is bound to contribute to the revenue charged on certain alluvial lands and entitled to share in the profits thereof. *RAM SHUNKER v. SHEO PERSHAD* . . . 5 N. W., 7

32. ——— Gaondars.—*Suit under Act XIV of 1863, s. 1, cl. 2, for profits*.—Gaondars, or persons exercising full proprietary rights over their land, save that they pay Government revenue through a third party, and also pay *malikana* at a certain rate to such third party as their superior landlord, fall within the terms of clause 2, section 1, of Act XIV of 1863. *SHEO PREETAB NARAIN SINGH v. HURSHUNKER PERSHAD SINGH* . . . 5 N. W., 40

33. ——— Suit for profits by co-sharer. —*Act XIV of 1863, s. 1, cl. 2.—Sharer is possession*.—A suit by a co-sharer for possession of an undivided share, and for mesne profits, is substantially a suit for mesne profits, and therefore falls under clause 2 of section 1 of Act XIV of 1863, and should have been preferred in a Revenue Court. In the above-mentioned clause there is nothing which requires that a co-sharer should be a co-sharer in possession—that is, in receipt of profits. *ADUT v. NASEERA KOOPER* . . . 5 N. W., 238

34. ——— *Act XIV of 1863, s. 1, cl. 2*.—The plaintiffs, recorded proprietors of a certain share, sued, after their father died, under clause 2, section 1 of Act XIV of 1863, to recover profits which had accrued before their father's death. *Held (per STUART, C. J., SPANKIE, J., dissentients)* that the profits were recoverable in a Civil and not in a Revenue Court. *MATADEEN DOOBAY v. CHUNDER DEEN DOOBAY* . . . 6 N. W., 118

35. ——— *N.-W. P. Rent Act, XVIII of 1878, ss. 93, 206, 207.—Suit for share of profits from lumbardar*.—*Held* by the Division Bench, following the ruling of the majority of the Full Bench in *Ashraf-us-nissa v. Umrao Begum*, that a suit by a co-sharer in an undivided mehal against the heir of a deceased lumbardar for his share of profits collected by the lumbardar before his death is

JURISDICTION OF REVENUE COURT

—continued.

3. N.-W. P. RENT AND REVENUE CASES

—continued.

Suit for profits by co-sharer—continued.

a suit cognisable not by a Civil Court but by a Court of Revenue. *Per STUART, C. J.*—Observations on the application of sections 206 and 207 of Act XVIII of 1878. *BHIKHAN KHAN v. RATAN KUAR* [I. L. R., 1 All., 512]

36. ——— Suit by heirs of deceased co-sharer against heirs of deceased lumbardar for profits.—*Lumbardar and co-sharer.—Act XII of 1881, ss. 93 (h), 208*.—A suit by the heirs of a deceased co-sharer against the heirs of a deceased lumbardar for money claimed as profits due to the deceased co-sharer by the deceased lumbardar is a suit which is cognisable in the Civil and not the Revenue Courts. *Mata Deen Doobey v. Chunder Deen Doobey*, 6 N. W., 118; *Mata Deen v. Chunder Deen*, 2 N. W., 54; and *Bhikhan Khan v. Ratan Kuar*, I. L. R., 1 All., 512, observed on by STUART, C. J. *AHMADUDDIN KHAN v. MAJHI RAI* [I. L. R., 5 All., 438]

37. ——— Suit for arrears of revenue. —*Lumbardar and co-sharer.—Mortgages.—Act XVIII of 1878 (N.-W. P. Rent Act), s. 93 (g).—Act VIII of 1879, ss. 11, 12.—Per STUART, C. J., and STRAIGHT, J.*—The term "co-sharer" in section 93 (g) of Act XVIII of 1878 does not include the mortgagee of a co-sharer, and therefore a suit by a lumbardar against the mortgagee of a co-sharer for arrears of Government revenue is not one which, under that section, is cognisable in a Court of Revenue, but is one which is cognisable in a Civil Court. *Per FRASER, J., and OLDFIELD, J., contra.* *BHAWANI GIR v. DALMARDAN GIR* [I. L. R., 3 All., 144]

38. ——— *N.-W. P. Rent Act (Act XII of 1881), s. 93 (g)*.—*Held* that a suit against a co-sharer and the transferees of his share for arrears of Government revenue which became due before such transfer, the plaintiff claiming as lumbardar and as heir to the deceased lumbardar during whose incumbency such arrears became due, was cognisable in the Revenue Courts. The principle laid down in *Bhikhan Khan v. Ratan Kuar*, I. L. R., 1 All., 512, followed. *WAZIR MUHAMMAD KHAN v. GAURI DAT* . . . I. L. R., 4 All., 412

39. ——— Suit by lessee of occupancy tenant for recovery of possession.—*N.-W. P. Rent Act (Act XII of 1881), s. 95 (a)*.—Section 95 (a) of the North-Western Provinces Rent Act (XII of 1881) is applicable to a suit by the lessee of an occupancy tenant to recover possession of the land under the lease from which the lessor has ejected him, and such a suit is exclusively cognisable by the Revenue Courts. *Muhammad Zaki v. Hasrat Khan*, W. N., All., 1883, p. 61; and *Bibban v. Partab Singh*, I. L. R., 6 All., 81, distinguished. *CHITTOY v. NARPAT* . . . I. L. R., 8 All., 62

JURY.

Col.

1. CIVIL CASES 2921
2. JURY UNDER HIGH COURT CRIMINAL PROCEDURE 2921
3. JURY IN SESSIONS CASES 2922
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See CASES UNDER VERDICT OF JURY.

Trial by—

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[23 W. R., Cr., 32]

Trial of case properly triable with assessors by—

See ASSESSORS . I. L. R., 3 Cal., 765

1. CIVIL CASES.

1. Trial of civil cases by Jury.

—*Illegal procedure.*—The Civil Procedure Code nowhere empowers the Judge to try a case with the aid of a jury. *DOONGUE RAI v. DOORGA RAI*

[2 N. W., 97.]

2. JURY UNDER HIGH COURT CRIMINAL PROCEDURE.

2. Special Jury.—*Power of Clerk of Crown.*—Drawing up list of Special Jurors.—The drawing up of the list of Special Jurors is entirely in the discretion of the Clerk of the Crown, and the Court will not interfere. *IN THE MATTER OF SHAMORUND MITTER*

[1 Ind. Jur., N. S., 106]

3. Ballot for selection of Jury.—*High Court's Criminal Procedure.*—*Criminal Procedure Code, 1882, ss. 274, 276 (Act X of 1875, s. 33).*—*Constitution of jury.*—*Ballotting.*—Act X of 1875, section 33, contemplates that the names of the jury to be "chosen by lot" shall all be drawn out of one box containing the names of all persons summoned to act as jurors. *REG. v. VITHALDAS PRANJIVANDAS*

I. L. R., 1 Bom., 462

4. Constitution of Jury.—*High Court's Criminal Procedure.*—*Criminal Procedure Code, 1882, ss. 267, 452 (Act X of 1875, ss. 32, 37).*—*Prisoner not being European British subject.*—A prisoner not being a European British subject, who is not charged jointly with a European British subject, is not entitled, under the provisions of the High Court Criminal Procedure Act, to be tried by a jury of which at least five persons shall not be Europeans or Americans. *REG. v. LALUBHAI GORALDAS*

[I. L. R., 1 Bom., 232]

5. Separation of Jury.—*Discretion of Judge.*—*Trials for felony and for misdemeanour.*—By the practice of the Supreme Court at Bombay, before the Penal Code came into operation, on a trial for treason or felony, the jury (as in England) was kept together during the night under the charge of officers of the Court; but on a trial for misdemeanour it was in the discretion

JURY—continued.

2. JURY UNDER HIGH COURT CRIMINAL PROCEDURE—continued.

Separation of Jury—continued.

of the Judge whether they should be kept together or allowed to return to their homes for the night, the latter being generally done; and after the Code came into operation the practice continued the same, as well in the Supreme Court as subsequently in the High Court the Judges applying the rule by determining whether the offence under trial would by the old law have been felony or a misdemeanour. *REG. v. DAYAL JAIRAJ*

3 Bom., Cr., 20

3. JURY IN SESSIONS CASES.

6. Qualification of juror.—*Selection of jury.*—In forming a jury a Sessions Judge should endeavour to obtain persons of an independent position in life, and men of judgment and experience.

QUEEN v. RAM DUTT CHOWDERY

[23 W. R., Cr., 35]

7. Clerk in office of Magistrate.—The fact that a person is a clerk in the office of the Magistrate of the district, is not sufficient to disqualify him from sitting on a jury. *IN THE MATTER OF THE PETITION OF ROCHIA MOHATO. EMPRESS v. ROCHIA MOHATO*

[I. L. R., 7 Cal., 42; 8 C. L. R., 278]

8. Objection to juror.—*Criminal Procedure Code, 1861, s. 344, cl. 3.*—The allowing of an objection to a juror coming within the third clause of section 344 of the Code of Criminal Procedure is in the discretion of the Court; and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous. *QUEEN v. KRISNO CHURN*

16 W. R., Cr., 66

9. Swearing Jury.—*Necessity to swear jurors.*—Held that it was not necessary in a trial by jury before a Court of Session under the provisions of the Code of Criminal Procedure that the jurors should be sworn. *REG. v. LAKSHUMAN RAM CHUNDRA*

3 Bom., Cr., 56

10. Omission to swear Jury in Sessions case.—*Quare.*—If the jury in a Sessions case are not sworn, is the omission one which would be covered by section 13 of the Oaths Act, 1873? *QUEEN v. RAMSODOY CHUCKERBUTTY*

[20 W. R., Cr., 19]

11. Withdrawal of case from Jury.—*Improper acquittal.*—In a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the medical officer and discharged the prisoner, not considering it necessary that the case should go before a jury. Held that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence to the jury. *QUEEN v. HUROO SAHA*

16 W. R., Cr., 20

JURY—continued.**3. JURY IN SESSIONS CASES—continued.**

12. ——— Trial by Jury or assessors.—*Deputy Commissioner of non-regulation provinces.—**Held*, with reference to the provisions of sections 445A and 445B of Act VIII of 1869, that the chief executive officer of a non-regulation province is bound to proceed under the provisions of Act XXV of 1861 in the trial of offences punishable by a Court of Sessions, and that he must try the prisoners with a jury or assessors, even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Sessions. *QUEEN v. KISHORAM DASS* . . . 13 W. R., Cr., 59

13. ——— Irregularity in trial.—*Offence under s. 91, Registration Act, 1866.—*An offence under section 91 of the Registration Act ought not to be tried with the assistance of a jury. Where, however, such offence was tried with the assistance of a jury, and the verdict of the jury, who were unanimous in convicting the prisoner, was approved of by the Sessions Judge, the High Court considered it unnecessary to quash the proceedings. *QUEEN v. ABDOL KURREEM* . . . 14 W. R., Cr., 32

14. ——— Case tried by jury to which trial by jury had not been extended.—*Invalidity.—Appeal.—*Where a case to which Government had not extended trial by jury was tried by jury, the trial was not considered invalid on that ground; but the Judge's charge was treated as his judgment in the case, and the prisoner's appeal was heard on the facts. *QUEEN v. DOORGA CHURN SHOME* . . . 24 W. R., Cr., 30

15. ——— Trial by jury of case triable by assessors.—*Adultery.—Criminal Procedure Code, 1872, s. 233.—*The fact that a charge under the Penal Code, section 497, was triable with assessors and not by a jury, would not affect the legality of a conviction of adultery before a jury. *QUEEN v. LUOKHY NARAIN NAGOBY* [24 W. R., Cr., 18

16. ——— Trial of charges partly triable by assessors.—*Power of Judge in dealing with verdict.—Criminal Procedure Code, 1872, s. 233, Expl.—*In a trial by a jury before a Court of Sessions upon charges some of which were triable by a jury, and some with the aid of assessors, the jury, by a majority of four to one, returned a verdict of "not guilty" on all the charges. *Held* that it was not competent to the Judge, who disagreed with the verdict, to treat the trial so far as it dealt with the latter charges, as a trial with the aid of assessors, and concurring with the minority to convict and sentence the accused persons. It was the duty of the Judge, in such a case, to have accepted the verdict as one of acquittal, and then to have passed orders in accordance with sections 268 of the Code of Criminal Procedure. Explanation to section 233 of the Code of Criminal Procedure discussed. In the matter of *BHOOT NATH Dey* . . . 4 C. L. R., 405

JURY—continued.**4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.**

17. ——— Appointment of Jury.—*Criminal Procedure Code, 1872, s. 523.—Discretion of Magistrate.—*A Magistrate acting under Act X of 1872, section 523, should exercise his own independent discretion in selecting the members of the jury, and the persons so selected by him should not be nominees of the party interested in upholding the Magistrate's order. *SHATTANUNDO GHOSAL v. CAMPERDOWN PRESSING COMPANY* . . . 21 W. R., Cr., 43

18. ——— Jury improperly constituted.—*Criminal Procedure Code, 1861, s. 310.—*A jury appointed under section 310 is not properly constituted when only the foreman is appointed by the Magistrate and the rest of the members by the parties. *QUEEN v. HARGREND PAL* [7 B. L. R., Ap., 57

S. C. DINO NATH CHUCKREBUTTY v. HURGOIND PAL . . . 16 W. R., Cr., 23

19. ——— Jury improperly constituted.—*Criminal Procedure Code, 1872, s. 523.—*In a case in which a party on whom an order had been made for abatement of nuisance applied under section 523, Criminal Procedure Code, 1872, for the appointment of a jury, the Magistrate appointed the complainant and two of his witnesses to be, the former a foreman, and the latter two of the members of the jury. *Held* that the jury so constituted by the Magistrate was not a proper tribunal under section 523, Criminal Procedure Code, and the proceedings, &c., were accordingly set aside, and the Magistrate directed to appoint a fresh jury. *BRINDABUX DUTT v. DWARKANATH SHIN* . . . 22 W. R., Cr., 47

20. ——— Juror refusing to act.—*Criminal Procedure Code, Act X of 1862, ss. 133, 138, 139.—Jury illegally constituted.—*One out of five jurors appointed under section 138, Act X of 1862, declined to act on the jury. Two out of the remainder of the jury were in favour of a temporary order under section 139 being maintained, whilst the other two were against its being so maintained. The Deputy Magistrate declined to pass any order under section 139 of the Code of Criminal Procedure, as a majority of the jurors did not find the temporary order to be reasonable and proper, and he therefore struck off the case. *Held* that the course taken by the Deputy Magistrate was irregular, and ordered that a fresh jury be summoned, and the case enquired into anew. *UMA CHURN MUNDLE v. JOSHEEN SHIKH* [L. L. R., 11 Cal., 84

21. ——— Appointment of second jury.—*Criminal Procedure Code, 1872, s. 523.—*Where a jury appointed by a Magistrate under section 523, Criminal Procedure Code, had fully entertained and considered the matter submitted to it, and the individual members of the jury had given in their opinion to the foreman to report to the Magistrate, and the only delay was in the foreman's making the report, it was held that the Magistrate could not appoint a second jury to consider the matter afresh,

JURY—continued.**4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—continued.****Appointment of second Jury—continued.**

but ought to have acted on the report of the first jury which had been given in before he made his final order in the matter. *NOZUMUDDY v. HASIM KHAN* 21 W. R., Cr., 54

22. ——— Question for Jury.—Criminal Procedure Code, 1872, s. 523.—Procedure.—In a case in which a Magistrate ordered a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced, and in which subsequently the Magistrate, on the application of the party charged, appointed a jury under section 523, Criminal Procedure Code, it was held that the question the jury should have been told to try was the question whether the first order of the Magistrate was reasonable and proper, and for that purpose to consider whether there was a *bona fide* question between the parties as to the right of way over this particular piece of land. *OMESH CHUNDER SEN v. ICHANATH MOZUMDAR* [21 W. R., Cr., 64

23. ——— Fixing time for award of Jury.—Criminal Procedure Code, 1861, s. 310.—In referring a case regarding a nuisance to arbitrators under section 310, Code of Criminal Procedure, a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be done whenever from any cause the constitution of the jurors is changed and a fresh juror is appointed. Where this is not done, a Magistrate cannot carry out his original order if there is any delay in the submission of the award by the arbitrators. *IN THE MATTER OF SHAMA KANT BUNDOPADYHA* [14 W. R., Cr., 69

24. ——— Award delivered after time fixed, Effect of.—Criminal Procedure Code (Act VIII of 1869), s. 310.—Act X of 1872, s. 523.—A Magistrate cannot receive and enforce the award of a jury under section 310 of the Criminal Procedure Code, delivered long after the day fixed for the purpose. *QUEEN v. HARGOBIND PAL* [7 B. L. R., Ap., 57

S. C. DINONATH CHUCKERBUTTY v. HARGOBIND PAL 16 W. R., Cr., 23

25. ——— Decision of Jury, Effect of.—Finality of decision so far as Magistrate is concerned.—Where a jury is appointed under section 310 of the Code of Criminal Procedure to try whether an order passed by a Magistrate for the removal of a nuisance or obstruction is reasonable or not, the Magistrate is bound under that section to be guided by the decision of the jury. *QUEEN v. POHOLEN MULLICK* 12 W. R., Cr., 28

26. ——— Report of majority of Jury.—Criminal Procedure Code, 1874, s. 528.—Duty of Magistrate.—Where, under section 523 of the Criminal Procedure Code, a Magistrate receives the report of a jury, he is bound to act according to the recommendation of the majority. When a number of

JURY—continued.**4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—continued.****Report of majority of Jury—continued.**

jurors do not agree with one another in every respect, but all agree that a certain order passed by a Magistrate, taken as a whole, is not necessary, such jurors should be counted together as objecting to the order. *QUEEN v. NAKORI PAROEN* 25 W. R., Cr., 31

27. ——— Criminal Procedure Code, s. 133.—Public way.—Nuisance.—Removal of obstruction.—Refusal of minority of jury to act.—When a minority of a jury appointed under the provisions of section 133 of the Criminal Procedure Code do not act, the Magistrate cannot proceed under that section upon a report submitted by the majority. *IN THE MATTER OF DURGA CHAMAN DAS v. SASHI BHUSAN GUHO* I. L. R., 13 Cal., 275

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See CONTRACT—BREACH OF CONTRACT.
[9 B. L. R., 561

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See JUDICIAL NOTICE.

[1 B. L. R., O. Cr., 15

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[7 Bom., Cr., 1
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K**KABULIAT.**

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| 1. FORM OF KABULIAT | 2926 |
| 2. IN RESPECT OF WHAT SUIT LIES | 2927 |
| 3. RIGHT TO SUE | 2928 |
| 4. REQUISITE PRELIMINARIES TO SUIT | 2929 |
| 5. PROOF NECESSARY IN SUIT | 2931 |
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[I. L. R., 3 Cal., 464

Suit for—

See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—KABULIATS.

1. FORM OF KABULIAT.

1. ——— Date for commencement of kabulat.—Discretion of Court.—Suit for kabulat without specifying date.—Where a plaintiff asks for a kabulat for a given term, without specifying the date from which the term is to commence, it is in the discretion of the Court to fix the proper term. *POORNO CHUNDER ROY v. STALKART* [10 W. R., 362

KABULIAT—continued.**1. FORM OF KABULIAT—continued.**

Date for commencement of kabuliat—*continued.*

See GHOLAM MAHOMED v. ASMUT ALI KHAN CHOWDHRY B. L. R., Sup. Vol., 974

2. ——— Omission of specification of boundaries in kabuliat.—*Act X of 1859, s. 2.*—The want of specification of boundaries in a kabuliat is no ground for dismissing a suit for a kabuliat, when all the particulars of area are given as required by section 2 of Act X of 1859. RAMNATH RAKHIT v. CHAND HARI BHUYA

[6 B. L. R., 356: 14 W. R., 432

2. IN RESPECT OF WHAT SUIT LIES.

3. ——— Suit for kabuliat for portion of land.—*Land included in an entire holding.*—A suit for a kabuliat will not lie for a portion only of the land included in an entire holding. RAM DOSS BHUTTACHARJEE v. RAMJEEBUN PODDAR

[6 W. R., Act X, 103

ABDOOL ALI v. YAR ALI KHAN CHOWDHRY

[8 W. R., 467

4. ——— *Land held under istemrari tenures.*—A landlord cannot sue for a kabuliat in respect of a portion of the land held under an istemrari pottah. DOORGAKANT MOZOOMDAR v. BISHESHUR DUTT CHOWDHRY

[W. R., 1864, Act X, 44

5. ——— *Proprietor of fractional share in estate.*—The question was referred to a Full Bench "whether a suit by the owner of a fractional share of an undivided estate for a kabuliat will lie." NORMAN, J., was of opinion that, as a general rule, the holder of a tenure cannot be sued by owners of fractional shares in the superior tenure for separate kabuliat according to the proportions to which they allege themselves to be entitled in the superior tenure. A tenure is an entire thing, and cannot be subdivided against the will of the tenant. LOCH, BAYLEY, MACPHERSON, and MITTHER, JJ., did not answer the question, on the ground that it did not arise in the suit. INDAR CHANDRA DUGAR v. BRINDABUN BHARA

[8 B. L. R., 251: 15 W. R., F. B., 21

6. ——— *Uncultivated lands brought into cultivation.*—A separate kabuliat cannot be claimed for uncultivated lands already comprised in a lease, on the ground that such uncultivated lands have since been brought into cultivation. MAHOMED KALOO CHOWDHRY v. FEDAYE SHIKDAR

[8 W. R., 219

7. ——— *Right of fishery.*—A suit for a kabuliat will not lie for a right to fish in certain waters. MOHUN GOBIND SEIN v. NITTAYE HALDAR

[6 W. R., Act X, 101

8. ——— *Suit for etmami kabuliat.*—*Jurisdiction.*—A suit by a proprietor of land for an

KABULIAT—continued.**2. IN RESPECT OF WHAT SUIT LIES**

—*continued.*

Suit for etmami kabuliat—continued.

etmami kabuliat from his tenants at the prevailing rates is cognisable only under the Rent Act. NUSURUT ALI CHOWDHRY v. MAHOMED KANOO SIKDAR

[11 W. R., 541

9. ——— *Land occupied by buildings.*—*Jurisdiction.*—*Building used as dwelling-house, manufactory, or shop.*—Where the land in respect of which a kabuliat is demanded is occupied by a building used as an ordinary dwelling-house, manufactory, or shop,—*Held* that a suit for delivery of a kabuliat in respect of such land is not cognisable under the Rent Acts. If such land formed part of an agricultural holding and was auxiliary to its enjoyment, it would form a portion of the holding, and the landlord would be entitled to demand a kabuliat in respect of the entire holding, not excluding the land on which the building is erected. The principle of this decision will apply equally to suits brought to obtain payment of perjout as rent. CHOTUCK PANDOO v. INNAFUT ALI

[3 Agra, 49: S. C. Agra, F. B., Ed. 1874, 131

10. ——— *Suit by mutwalli to obtain kabuliat from khadim.*—*Jurisdiction.*—A suit by the mutwalli of a mosque to obtain a kabuliat from a khadim, or subordinate servant attached to the mosque, will not lie under the Rent Act. HIDDUT ALI v. KOENHMALLA MEEAJEE

[6 W. R., Act X, 9

11. ——— *Suit to set aside Collector's order for kabuliat.*—*Jurisdiction.*—A suit to set aside a decree passed by a Deputy Collector for executing a kabuliat in favour of the defendant, and for a declaration that the land in suit pertains to the talook of a third party, is cognisable under the Rent Act. SONATAN ROY v. ANAND KUMAR MOOKERJEE

[2 B. L. R., Ap., 31: 11 W. R., 86

3. RIGHT TO SUE.

12. ——— *Requisites for maintenance of suit.*—*Evidences of relationship of landlord and tenant.*—In order to maintain a suit for a kabuliat the plaintiff must show that the relation of landlord and tenant existed between him and the defendant. RAMBESUR AUDHIKAR v. WATSON & Co.

[7 W. R., 2

JALHA v. KOYLASH CHUNDER DEY

[10 W. R., 407

CHUNDER NATH NAG CHOWDHRY v. ASANOOOLAH MUNDUL

10 W. R., 438

SEEMUNTO KOONDOD v. BELJONATH PAUL CHOWDHRY

16 W. R., 296

KRISHNAYA v. CHOTOO

[1 N. W., 78: Ed. 1873, 131

MUHESH DUTT PANDY v. SEETUL SONAR

[1 N. W., Ed. 1873, 146

13. ——— *Agreement fixing rent.*—*Byot without right of occupancy.*—*Agreement*

KABULIAT—continued.**3. RIGHT TO SUE—continued.****Requisites for maintenance of suit—continued.**

filing rent.—A landlord can sue a ryot not having a right of occupancy for a kabuliat only when an agreement fixing the rent has been entered into. **AHMED REZA v. AGHOBI . 2 B. L. R., S. N., 15**

14. ——— *Allegation of tenancy.*—*Quare.*—Whether a suit for a kabuliat on an allegation that the defendant is holding a specific quantity of land under the plaintiff will lie. **YAKOOB ALI v. KANMOOLLAH . 8 W. R., 329**

15. ——— *Proof of right to assess as tenant.*—Until the right to assess has been properly determined, a suit for a kabuliat will not lie under Act X of 1859. **RAMNATH SINGH v. HUBO LALL PANDEY . 8 W. R., 188**

16. ——— *Proof of right to rent.*—*Decree declaring liability to assessment.*—Where the tenure of a defendant is declared liable to assessment in a suit passed between him and the plaintiff's vendor, the plaintiff can sue for a kabuliat, as he is thereby only carrying out the provisions of the decree obtained in that suit. **MODHOOSOODUN CHOWDHRY v. RAM MOHUN GHUR . 8 W. R., 473**

17. ——— *Suit for resumption.*—*Land claimed to be lakhiraj.*—*Obligation of landlord to sue for resumption.*—A landlord is not bound to sue for resumption before bringing a suit for a kabuliat in respect of lands which the defendant claims to hold as lakhiraj. **FUZLOX v. ABDULLAH . 7 W. R., 169**

18. ——— *Proof of right to rent.*—*Suit for declaration of liability to assessment and for kabuliat.*—A suit for a kabuliat cannot be maintained where the parties are not related to each other as landlord and tenant. But a landlord may legally sue for a declaration of the amount of rent with which his land ought to be assessed; and should the occupant not agree to the rent assessed by the Court, the landlord may sue him for use and occupation, or for ejectment, or for both. **SHUNTO DOSS AUTITH v. HURNEHUR MOOKERJEE . 20 W. R., 368**

19. ——— *Proof of right to rent.*—*Trespasser.*—*Decree in summary suit for possession.*—A zemindar cannot compel a trespasser on his land to become his ryot and execute a kabuliat in his favour, and the fact that the zemindar has obtained a summary decree under section 15, Act XIV of 1859, against a person, does not entitle him to treat such person either as a trespasser or a ryot on his land. **HEMALEN v. KUMLA KANT BANERJEE [16 W. R., 133]**

4. REQUISITE PRELIMINARIES TO SUIT.

20. ——— *Notice of enhancement.*—A suit for a kabuliat at an enhanced rate, to take effect prospectively from the date of suit, may be instituted without any preliminary notice of en-

KABULIAT—continued.**4. REQUISITE PRELIMINARIES TO SUIT—continued.****Notice of enhancement—continued.**

hancement, and at any time during the tenancy. **BRAS v. KUMUL SHAHA . 4 W. R., Act X, 5**

21. ——— *Landlord and tenant.*—*Held, per STEER, KEMP, and SEXTON-KARR, JJ.,* that, under Act X of 1859, a landlord can sue his tenant for a kabuliat fixing the amount of rent, without having served upon him notice of enhancement. *Per NORMAN, J.*—Such notice was necessary, and by section 9 of Act X of 1859 the landlord must, before suing for a kabuliat, tender a pottah to the tenant. *Per PEACOCK, C. J.*—The question did not arise in the case. The relationship of landlord and tenant did not exist between the parties. **RAM KANTH CHOWDHRY v. BHUSAN MOHUN BISWAS [B. L. R., Sup. Vol. 25: W. R., F. B., 183]**

WOOLFUT HOSSEIN v. JUMOONA DASS [W. R., 1864, Act X, 60]
DOORGA PERSHAD DOSS v. KALEE KINKUR ROY [5 W. R., Act X, 88]

22. ——— *Act X of 1859, ss. 9 and 13.*—*Held, by the majority of a Full Bench,* a landholder can sue for a kabuliat at an enhanced rate without first having given notice of enhancement under section 13, Act X of 1859. He can also sue without having first tendered a pottah. *Per PEACOCK, C. J.*—He can sue if he has given notice of enhancement. *Per NORMAN, J.*—A suit for a kabuliat is not maintainable except in cases provided for by section 9, Act X of 1859. **THAKOORANEN DASSER v. BISHESHUR MOOKERJEE [B. L. R., Sup. Vol. 202: 3 W. R., Act X, 29]**

SUFFER ALI v. FUTTEE ALI [W. R., 1864, Act X, 2]
TAKINNE CHURN BOSE v. KASHINATH SINGH [W. R., 1864, Act X, 87]

23. ——— *Tender of pottah.*—*Decree contingent on offer of pottah.*—The previous tender of a pottah is not absolutely necessary to entitle a landlord to a decree for a kabuliat. The decree may make the obtaining of the kabuliat contingent on the offering of a corresponding pottah. **MUNSOOR ALI v. BUNGOO SINGH . 7 W. R., 262**

NITYANUND GHOSE v. KISSEN KISHORE [W. R., 1864, Act X, 22]

MAHOMED YACOOB HOSSEIN v. CHOWDHRY WAHED ALI [4 W. R., Act X, 23: 1 Ind. Jur., N. S., 29]

GOVIND CHUNDER ADDY v. AULOO BEEBEE [1 W. R., 49]

MODHOOSOODUN CHOWDHRY v. RAM MOHUN GHUR . 8 W. R., 473

24. ——— *Landlord and tenant.*—In order to entitle a landlord to sue for a kabuliat, he must tender a pottah. **AKHOY SUNKUR CHUCKERBUTTY v. INDEO BHUSAN DEB ROY [4 B. L. R., F. B., 58]**

KABULIAT—continued.**4. REQUISITE PRELIMINARIES TO SUIT—continued.****Tender of pottah—continued.**

S. C. AKHOY SUNKUR CHUCKERBUTTY v. INDRU BHUSAN DEB ROY . 12 W. R., F. B., 27

PRETAR CHUNDER BANERJEE v. PHILLIPPE
[2 W. R., Act X, 56]

TROYLUCKHONATH CHOWDHRY v. KALBEMA BIBHE
[2 W. R., Act X, 96]

UMBICA CHURN POTTERO v. BOIDANATH POTTERO
[1 W. R., 32]

25. ——— Act X of 1859, s. 9.—A landlord is not entitled, under Act X of 1859, section 9, to require his tenant to give him a kabuliat unless the tenant holds under a pottah, or the landlord has tendered a pottah. **GOBINLALL SMAL v. KINOO KOYAL** . Marsh., 400

DOORGA KANT MOZOOMDAR v. BISHESHUR DUTT CHOWDHRY . W. R., 1864, Act X, 44

26. ——— Issues.—Interveners.—Where a suit is brought for a kabuliat after service of the proper notice, the first and main question is whether, as a matter of fact, the plaintiff can establish that he or some person from whom he derives title, put the defendant into possession of all the lands in respect of which the kabuliat is demanded; and the second question is whether he has tendered a proper pottah, and is therefore entitled to the corresponding kabuliat. For the decision of such a suit it is immaterial whether the land for which the kabuliat is demanded belongs in reality to the plaintiff or to third parties, and the Court should not allow the latter to come in as intervenors against the will of the plaintiff. **RADHA NATH CHOWDHRY v. JOY SOONDER MOITRA** . 2 C. L. R., 302

5. PROOF NECESSARY IN SUIT.

27. ——— Evidence of quantity of land.—Failure to prove quantity.—In a suit for obtaining a kabuliat, failure to prove the exact quantity of land for which the kabuliat is sought to be obtained, renders the suit liable to dismissal. **SHIB RAM GHOSH v. PRAN PIRIA**
[4 B. L. R., Ap., 89: 13 W. R., 280]

28. ——— Proof of reasonable rent.—Proof of holding land in suit.—Onus of proof.—A landlord suing a ryot for a kabuliat is bound to make out the reasonableness of the rent which he demands, and *a fortiori* that the defendant is holding the particular land specified in his suit. **SHIB CHUNDER BOSH v. RAM CHUND CHUND**
[9 W. R., 521]

29. ——— Rate of rent, Evidence of.—Customary rate of rent.—A landlord is bound to prove that the rate of rent at which he claims a kabuliat is the rate that he has been in the habit of receiving from the tenant. **RAM JEEBUN CHUCKERBUTTY v. KHOODEERAM CHATTERJEE**
[17 W. R., 388]

KABULIAT—continued.**5. PROOF NECESSARY IN SUIT—continued.****Rate of rent, Evidence of—continued.**

30. ——— Failure to prove rate of rent.—“Probable rent.”—In a suit for a kabuliat for certain resumed lakhiraj where it was found that the quantity of land in the defendant's possession was less than that alleged by the plaintiff, and that the rates of rent depoted to were less than those claimed,—*Held* that the suit was rightly dismissed, and that the mere use of the word “probable” in describing the rate of rent claimed, ought not, under the circumstances, to better the position of the plaintiff; the entire gist of the suit having been to get a certain rate of rent. *Held* (by MITTAL, J.) that the mere fact of the lands in question having been declared in a previous litigation between the parties to be the *mâl* lands of the plaintiff, zemindari wrongfully held by the defendant under an invalid lakhiraj title was not sufficient to convert the defendant into a tenant of the plaintiff; and that as the relation of landlord and tenant did not exist between the parties, the foundation was wanting for a suit for a kabuliat. **SOWDAMINER DEBIA v. MOHESH CHUNDER MOOKERJEE** . 19 W. R., 263

31. ——— Landlord and tenant.—Enhancement.—Plaint.—Decree.—A landlord, who sues for a kabuliat at a specified rate, but fails to show that such rate is fair and equitable, is not entitled to a decree for a kabuliat at a less rate, but the suit must be dismissed. *Held*, also (PRER, J., doubting), that in a suit for a kabuliat the plaintiff should specify the date for the commencement of the kabuliat. A plaintiff which does not specify such date ought to be returned; but if it has been admitted and the case heard, the Court may supply the omission by specifying in the decree the date from which the kabuliat is to commence. **GHOLAM MOHAMED v. ASMUT ALI KHAN CHOWDHRY**
[B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14]

HAMID ALIEH v. AFEROODDEEN
[1 B. L. R., S. N., 14: 10 W. R., 213]

DINDAYAL PARAMANIK v. SURENDRANATH ROY
[3 B. L. R., A. C., 78, note: 10 W. R., 77]

32. ——— Failure to prove rate of rent.—Tenure invalid lakhiraj.—*Held* that the principle of the Full Bench decision in the case decided on the 19th March 1868, *Gholam Mahomed v. Asmut Ali Khan Chowdhry*, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14, applies as much to cases in which defendant has held under an invalid lakhiraj as to ryots whose rents are to be enhanced. **IMDAD HOSEIN v. STACE** . 12 W. R., 454

33. ——— Suit for kabuliat at rate other than fair and equitable.—A suit for a kabuliat at a given rent, where the rate claimed is found to be above what is fair and equitable, is a suit for enhancement to which the Full Bench ruling—*Gholam Mahomed v. Asmut Ali Khan Chowdhry*, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14—applies, even though the rent is asked only for excess land. **KUNCHUN DEO SINGH v. TEKAIT SINGH NATH SINGH** . 15 W. R., 289

KABULIAT—continued.**5. PROOF NECESSARY IN SUIT—continued.****Rate of rent, Evidence of—continued.**

34. — Failure to prove rate of rent.—Right to kabuliati at fair rent after notice of enhancement.—Where a tenant has had full and timely notice of the grounds on which his landlord claims a kabuliati at enhanced rates, the landlord is entitled to a decree for a kabuliati for what he may prove to be a fair and legal demand, notwithstanding his failure to prove his right to a kabuliati at the rate fixed by him. The Full Bench ruling in *Gholam Mahomed v. Asmat Ali Khan Chowdhry*, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14, not applying to a case where notice of enhancement has been given. *GOPENATH JANNAH v. JETOO MOLLAH* [18 W. R., 272]

35. — Failure to prove rate of rent.—Suit for kabuliati and assessment after resumption.—A party having obtained a decree for resumption declaring that he was entitled to assess rent upon certain land brought a suit for a kabuliati. The first Court found that the extent of the land was less than that alleged in the plaint, and the rate of rent to which the plaintiff was entitled, lower than that claimed. Accordingly it decreed a kabuliati for the proper quantity of land at the proper rate. The lower Appellate Court dismissed the suit, on the ground that the plaintiff had not proved the claim stated in the plaint. Held that the District Judge had rightly applied the decision in *Gholam Mahomed v. Asmat Ali Khan*, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14, which was equally applicable to cases in respect of lands for the first time resumed and assessed. *JELLOR RUHMAN v. SHEETARAM DUTT* 21 W. R., 224

36. — Enhancement of rent.—Presumption of landlord's willingness to grant pottah.—In order to entitle a landlord to sue a tenant for a kabuliati at a certain rate of rent, he should either have tendered a pottah to the tenant at the rate of rent mentioned in the kabuliati, or he should be willing to grant a pottah at that rate; and if the Court considers that the rent which he claims is the correct amount, it will presume that he is ready to grant a pottah at that rate, and will give him a decree for the kabuliati. But this presumption will not hold if the Court thinks that the rate claimed is too high; and in such a case, therefore, the presumption having failed, the landlord will not be entitled to a kabuliati at such lower rate as the Court may think just, but his suit will be dismissed. *Gholam Mahomed v. Asmat Ali Khan Chowdhry*, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14, followed. *Gopenath Jannah v. Jetoo Mollah*, 18 W. R., 272, dissented from. *GOGON MANJI v. KASHISHWARY DEBI* I. L. R., 8 Calc., 406

S. C. GOGON MANJI v. GOBIND CHUNDER KHAN
1 C. L. R., 241

37. — Enhancement of rent.—Pottah, Tender of.—Form of decree.—If a plaintiff brings a suit for a kabuliati at an enhanced rate against a tenant holding a mouzah under him at

KABULIAT—continued.**5. PROOF NECESSARY IN SUIT—continued.****Rate of rent, Evidence of—continued.**

a wholly insufficient rent, and the tenant sets up a wholly false and fraudulent defence,—e.g., that the rent he pays is not liable to enhancement, as he holds under a pottah which entitles him to hold so long as he pays a certain fixed rent quite irrespective of the value of his holding; and if on enquiry it is found that the defendant's plea is entirely false, and that he is not entitled to hold at any fixed rent, but only on payment of a fair rent with reference to the value of his holding, still if it be found that the plaintiff has at all over-estimated the amount of rent to which he is entitled, his suit must be dismissed with costs. *BEJO KISHORE SINGH v. BEARUT SINGH MOHA-PUTTUR* I. L. R., 4 Calc., 968

MAHOMED ASSUR v. POGOSH 2 C. L. R., 8

6. DECREE FOR KABULIAT.

38. — Form of decree.—Specification of duration of kabuliati.—Decree in suit for kabuliati.—In a decree for a kabuliati the term for which it is to remain in force should not be fixed. *SWARNAMAYI v. GAURI PRASAD DAS* [3 B. L. R., A. C., 270]

39. — Kabuliati, Decree for, without fixing term, Effect of.—Where a suit for a kabuliati at an enhanced rent is decreed without any term being fixed by the Court, the kabuliati executed is inoperative beyond the year of demand. *KRISTO CHUNDER MURDRAJ v. POOROSUTUM DASS* [15 W. R., 424]

MODHOO RAM DEY v. BOYDONATH DASS
[9 W. R., 592]

KABANAVAN.

See CASES UNDER MALABAR LAW—JOINT FAMILY.

See CASES UNDER MALABAR LAW—MAIN-TENANCE.

KARNAM, OFFICE OF—WOMEN.

Women are incapacitated from holding the office of Karnam. *Alymalammal v. Venkataramayyan*, S. D. A., Mad., 1844, p. 85, followed. *VENKATARAMMA v. RAMANUJASAMI* . I. L. R., 2 Mad., 312

KAZI, APPOINTMENT OF—

See MAHOMEDAN LAW—CUSTOM.

[I. L. R., 1 Bom., 633]

See MAHOMEDAN LAW—KAZI.

[I. L. R., 1 Bom., 633]

I. L. R., 8 Bom., 72

1 Bom., Ap., 18

KHOJA MAHOMEDANS.

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION.

[12 Bom., 281, 294]

I. L. R., 3 Bom., 34

See RELIGIOUS COMMUNITY.

[12 Bom., 323]

KHOTI TENURE.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY. 8 Bom., A. C., 1

1. ———— **Proprietary rights.—Ownership of wood on village lands.—Forest rights.**—The plaintiff sought to raise the question whether, in virtue of his being izafatdar and khot of three fourths of a village, he was or was not proprietor of three fourths thereof, and entitled, as such proprietor, to three fourths of the wood, including teak as well as izaili wood, growing on the village lands. His rights under the izafati title depended on two documents: one, an imperial sanad, dated in A.D. 1653; the other, a Marathi document, dated in A.D. 1722. The first was construed to confer upon the grantee, as collector of the revenue, certain perquisites, and to make hereditary a right which before had been only a personal right, with reversion to the sovereign, but not to confer any proprietary right in the village lands. By the second, all that was granted was a right to babatas or cesses, the grantee being the desai, or collector of the revenue, on behalf of the Government. Therefore, it was held that the izafati title did not carry with it the proprietary right. On the question as to the khoti, it was held, without the expression of any opinion, that no khot is or can be the proprietor of the soil; that such a right is not vested in every khot. This khot of three fourths of a village had been authorised by the Government to carry on the management, as khot, of the remaining fourth, and had agreed, at the time of entering into this arrangement, that he would preserve for the Government all the trees in reserves marked by survey numbers, and all the teak trees in the village. He had admitted that the Government had the power to make such reserves. It was not shown that the Government had cut down any izaili wood in the village; only that it had recovered the value of some izaili wood cut in the reserves without their leave. It was decided that the khot had not made out a title to any teak wood as against the Government, nor a claim against it in respect of the izaili wood. **NAGARDAS v. CONSERVATOR OF FORESTS, BOMBAY**

[I. L. R., 4 Bom., 264
I. R., 7 I. A., 55]

2. ———— **Right to restoration of tenure after resumption by Government.—Conditional restoration.**—In a suit brought by a khot in 1862 to recover an hereditary share in a khoti village, which had been mortgaged by her husband in 1845, and taken directly under Government management by the Sub-Collector of Kolaba on failure by the mortgagee to pass the customary agreement (kabuleet) for the security of the revenue for the year 1851-52, the Court of first instance decreed the restoration of the khoti estate on payment by the plaintiff of any loss which may have been sustained by Government during its entire management, but the District Judge in appeal modified that decree by annexing a condition that the plaintiff was to observe the engagements which had been entered into between Government and the sub-tenants of the estate through the revenue survey which had been introduced during the direct management of the village by Government, whether as regards the rates of assessment or

KHOTI TENURE.—Right to restoration of tenure after resumption by Government—continued.

the right of tenancy. *Held*, by ARNOULD and NEWTON, JJ. (TUCKER, J. dissentiente), that plaintiff had no right to object to the condition subject to which the District Judge had allowed her claim to resume the khotship. **TAJUBAI v. SUB-COLLECTOR OF KOLABA**

8 Bom., A. C., 132

3. ———— **Liability to assessment for lands while khoti village is under attachment by Government.**—*Bom. Act I of 1865, s. 11, cl. 1, and s. 38.*—A khot is liable to be assessed for khoti profits in respect of land in his private occupation during the time that the khoti village is under attachment by Government. *Quære*,—Whether a khot in respect of such lands is a tenant within the meaning of section 11, clause 1, of Bombay Act I of 1865, and whether the powers in section 33 of that Act apply to such lands. **RAMCHANDRA NARSINHA v. COLLECTOR OF RATNAGIRI**

[7 Bom., A. C., 41]

4. ———— **Khot's right to profits for one year when khoti village under Government attachment.**—*Bom. Khoti Act, I of 1890.—Land Revenue Code, (Bom.) Act V of 1879, s. 162.—Right to levy profits from khoti co-sharer.—Limitation.*—The position of a khot, in the villages to which the Bombay Khoti Act I of 1890 has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of khoti profits, on his resuming the management of the village, would be regulated by section 162 of the Revenue Code, Bombay Act V of 1879. But this rule does not hold good where the village attached is one in the Kolaba District to which the Khoti Settlement Act (I of 1890) has not been extended, unless the khots therein are sanadi or vatandar khots. Where plaintiff sued the defendant, his khoti co-sharer, to recover from him the khoti profits for the year during which the village was under Government attachment, and it was found that the Khoti Act I of 1890 was not extended to the village and that the plaintiff was not a sanadi or vatandar khot, —*Held* that the plaintiff was not entitled to recover the profits from the defendant, nor could he do so from Government under the Revenue Code, even if it had collected them for the year of attachment. The Government could not be said to have been trustee for the khots of the village. **BHIKAJI RAMCHANDRA OKH v. NISAMALI KHAN**

[I. L. R., 8 Bom., 525]

KIDNAPPING.

1. ———— **Requisites of offence.—Penal Code, s. 368.—Abduction from lawful guardianship.**—To constitute the offence of kidnapping, under section 363 of the Penal Code, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is a guardianship by a person who is lawfully entrusted with the care or custody of a minor. **QUEEN v. BULDO**

[2 N. W., 236]

2. ———— **Penal Code, ss. 361, 363.—Enticing from lawful guardianship.**—To

KIDNAPPING.—Requisites of offence—continued.

support a conviction for kidnapping, under sections 361 and 363 of the Penal Code, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped. *QUEEN v. NEELA BIRIN* . . . 10 W. R., Cr., 33

QUEEN v. MOHIM CHUNDER SIL [16 W. R., Cr., 42

3. ———— **Omission to enquire as to guardian.—Child under ten years of age.—Penal Code, s. 361.—Guardianship.—Minor.**—A child under ten years of age is, *prima facie*, subject to guardianship, and any one removing such child without permission properly obtained, takes the risk of such act upon himself; the fact of having omitted to enquire whether the child had a guardian or not, is no defence to a charge of kidnapping a minor from lawful guardianship under section 361 of the Penal Code. *EMPRESS v. UMSADBAKSH*

[I. L. R., 3 Bom., 178

4. ———— **Lawful guardianship.—Guardianship of illegitimate child.—Penal Code (Act XLV of 1860), ss. 361, 366.**—The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor within the meaning of section 361 of the Penal Code. The explanation of the words "lawful guardian" in section 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly, in cases of abduction, that the person from whose care the minor has been abducted was the guardian of such minor within the meaning of the legal acceptance of the word. *EMPRESS v. PEMANTLE*

[I. L. R., 8 Cal., 971

5. ———— **Enticing away child playing on public road.—Taking from lawful guardianship.**—An enticing away of a child playing on a public road is kidnapping from lawful guardianship. *QUEEN v. OOOZERUN* . . . 7 W. R., Cr., 96

6. ———— **Penal Code, s. 363.—Betrothed girl after marriage is broken off.**—A person who carries off, without the consent of her guardian, a girl to whom he had been betrothed by her father after the father had changed his mind and broken off the marriage, is guilty of kidnapping punishable under section 363 of the Penal Code. *QUEEN v. GOOROODASS RAJBUNSEE*

[4 W. R., Cr., 7

7. ———— **Husband taking away wife.—Abettors in taking away wife.**—A husband cannot be convicted of kidnapping for taking away his own wife, nor can those who aid him in doing so. *QUEEN v. ASKUR* . . . W. R., 1864, Cr., 12

8. ———— **Consent.—Taking by force or fraud.—Penal Code, s. 361.**—The consent of a kidnapped person is immaterial, and it is not necessary for a conviction, under section 361, Penal Code, that

KIDNAPPING.—Consent—continued.

the taking or enticing should be shown to have been by means of force or fraud. *QUEEN v. BHUNGHE AHEER* . . . 2 W. R., Cr., 6

QUEEN v. AMGAD BUGEAH . . . 2 W. R., Cr., 61

QUEEN v. MODHOO PAUL . . . 3 W. R., Cr., 9

QUEEN v. KOORDAN SINGH . . . 3 W. R., Cr., 15

QUEEN v. SOOKHEE . . . 7 W. R., Cr., 36

9. ———— **Abetment of kidnapping.—Penal Code, ss. 116 and 363.**—Accused was convicted by the Magistrate of abetting the kidnapping of a minor. Accused, knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon and was arrested on the way thither. The Sessions Judge reversed the conviction, on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. *Held*, by the High Court, that, so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that in the present case the conviction should be of an offence punishable under sections 363 and 116 of the Penal Code. *REG. v. SAMIA KAUNDAN* . . . I. L. R., 1 Mad., 173

10. ———— **Penal Code (Act XLV of 1860), ss. 109, 363.—Right to custody of children.**—A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of A., and on the same day the daughter was married to B., the brother of A., without the father's consent, it was held that A. was rightly convicted under sections 109 and 363 of the Penal Code of abetting the offence of kidnapping. *IN THE MATTER OF THE PETITION OF PRAN KRISHNA SURMA. EMPRESS v. PRANKRISHNA SURMA*

[I. L. R., 8 Cal., 969: 11 C. L. R., 6

11. ———— **Concealment of kidnapped person.—Penal Code, s. 363.—Concealment of kidnapper.**—Section 363 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers. *QUEEN v. OOOJEE* . . . 6 W. R., Cr., 17

12. ———— **Penal Code, s. 363.**—The mere fact of a girl being received into a house and retained there by the owner, even after he may have become aware or found reason to believe that she had been kidnapped, does not amount to concealment of her, unless an intention of keeping her out of view be apparent. *QUEEN v. JHURBUP* [5 N. W., 133

13. ———— **Girl merely staying temporarily in another house.**—The mere cir-

KIDNAPPING.—Concealment of kidnapped person—continued.

sumstance of a girl, who had been kidnapped, staying in the house of a person for a day or two, does not warrant the conclusion that she was wrongfully concealed by that person, with the object of baffling any search that might be made for her. *QUEEN v. CHUBBOA* 5 N. W., 189

14. ————— *Penal Code, ss. 363, 366, 368.—Illegal concealment.*—When a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under section 363 of the Penal Code only, and of the latter under section 368 only, while the separate conviction of both under section 366 was quashed. *QUEEN v. ISREH PANDRY* [7 W. R., Cr., 56

15. ————— *Restraint or confinement in attempt to kidnap.*—Where an act of restraint or confinement in an attempt to kidnap has been exercised in furtherance of the attempt, and goes to form part of that offence, and is not done with an intention or object which can be separated from the general intention to kidnap, it will constitute an integral part of that offence, and should not form the subject of a separate conviction and sentence. *QUEEN v. MUNGROO* 6 N. W., 293

16. ————— *Penal Code, s. 368.—Confinement of kidnapped girl.*—If, knowing a girl has been kidnapped, a person wrongfully confines her and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. *QUEEN v. SIKUNDER BHUKUT* [3 N. W., 146

KIDNAPPING—continued.

17. ————— *Proof of offence.—Evidence of kidnapped girl.*—The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for kidnapping. *QUEEN v. DOORGA DASS* [7 W. R., Cr., 104

KHAZANCHI.

See CRIMINAL PROCEDURE CODE, 1882, s. 45 (1872, s. 90).

[I. L. R., 4 Cal., 603

KINSHIP, PROXIMITY OF—

See CERTIFICATE OF ADMINISTRATION—ISSUE OF AND RIGHT TO CERTIFICATE. [I. L. R., 4 Cal., 411

KISTRANDI

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 257, 258 (1859, s. 206).

Suit on—

See CONTRACT ACT, s. 25.

[I. L. R., 4 Cal., 500

KNOWLEDGE.

See CASES UNDER ACQUIESCENCE.

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR 6 B. L. R., 85
[12 B. L. R., 406

of commission of offence.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES. [5 B. L. R., 274

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